

TEA Docket No. 127-LH-07-2019

FORT WORTH INDEPENDENT	§	
SCHOOL DISTRICT,	§	BEFORE ROBERT C. PRATHER, SR.
	§	
<i>Petitioner</i>	§	
	§	
v.	§	CERTIFIED INDEPENDENT
	§	HEARING EXAMINER
	§	
GEORGIA CLARK,	§	
	§	
<i>Respondent</i>	§	TEXAS EDUCATION AGENCY

RECOMMENDED DECISION OF THE INDEPENDENT HEARING EXAMINER

DATE FILED: 06-28-2019
DATE OF HEARING: 08-05 and 06-2019
60-DAY WAIVER TO: 08-29-2019
PRE-HEARING: 07-02-2019
BRIEFS: POST-HEARING 08-14-19, Extend 08-19-2019

INDEPENDENT HEARING EXAMINER: Robert C. Prather, Sr.

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BASIS OF HEARING: Appeal of Proposed Notice of Termination of Georgia Clark's educator Continuing Contract for 2018-2019.

STATEMENT OF CASE. Fort Worth Independent School District, Petitioner (hereinafter referred to as "FWISD" or "District"), issued a notice to terminate the continuing contract of Respondent, Ms. Georgia Clark (hereinafter referred to as "Respondent" or "Clark"), based on alleged violations of FWISD board policies, federal and state law and the Texas Educator's Code of Ethics as a result of Clark's alleged statements. Ms. Clark denies the claims and asserts her Tweets were free speech and the May 17 and 21, 2019 class incident did not occur as alleged, remediation has not been given and good cause has not been proven.

RECOMMENDATION: It is recommended that the FWISD administration's proposed termination of the Continuing contract of Georgia Clark is not justified, is not supported by the evidence, should not be approved and should not be upheld and that Georgia Clark's appeal of the proposed termination be Granted and that FWISD decline to terminate the employment of Georgia Clark.

I. INTRODUCTION

A. The Hearing was held on 08/05 and 06/2019 at FWISD Administration Building, in Tarrant County, Texas.

B. The Hearing was held pursuant to the FWISD policies and the Texas Education Code,

including 21.251.

C. References are to the transcript which consists of 2 volumes, for example: HT or TR 1 or Vol.1, p. 12, 1-18.

D. Admission of Exhibits:

1. FWISD or District = Fort Worth Independent School District.

FWISD = P, Pet. or FWISD or Plaintiff or Petitioner or Employer

2. Clark or Teacher = Georgia Clark

Clark = R, Resp., Def. or Defendant or Respondent or Employee.

3. The following Exhibits were agreed to be the parties at the beginning of the hearing and were admitted into evidence:

a. P-1 to -11, -16 to -19, -21, -29 to -32 (FWISD)

b. R-1 to -28 (R or Respondent), except R-10 is not for truth stated.

c. H-1 to H-5 (Hearing Examiner)

4. During the course of the Hearing:

Exhibit P-26 (Bd Video) was admitted;

Exhibit P-14 was withdrawn;

Exhibits P-12, -13, -15, -20, -22, -23, -24, -27, and -28 were admitted, but not for the truth of the matters stated; and

Exhibit P-25 was admitted, as to the media requests only, primarily FWISD 1038 – 7013, with the balance of pages not admitted.

5. No discovery responses, like Interrogatories, Disclosures or Document Production were offered or admitted into evidence as Exhibits, except Exh. R-12, being FWISD's Responses to Request for Admissions.

6. Any admissions, limitations or qualifications with respect to the admissions of the Exhibits are governed by what was stated in the Hearing and the Transcript, unless specifically addressed below.
- E. Students have been identified by an identifier such as SI or Student 1. The court reporter and parties have prepared a list of the students referenced in the hearing using the identifier.
- F. Georgia Clark requested that the hearing be a Closed Hearing. The Hearing was closed.
- G. The parties submitted their proposed findings of fact and conclusions of law and briefs to the Hearing Examiner after the Hearing.
- H. The Court Reporter was to deliver the original of the transcript and Exhibits to FWISD and not to the Hearing Examiner who would receive a copy.

II. FINDINGS OF FACT

- A. After due consideration of and based upon the credible evidence, including the credibility of the witnesses and matters officially noticed, before me in my capacity as Hearing Examiner, the following Findings of Fact (citations to evidence are not exhaustive or exclusive, but are intended to indicate some basis for the particular finding of fact) have been proven by a preponderance of the evidence.
- B. Article I, III and IV are incorporated herein by reference.
1. Respondent Georgia Clark is currently employed by Petitioner FWISD as a teacher under a continuing contract signed in 1999, governed by Chapter 21, Tex. Educ. Code. (TEC). **Ex's P1, R1; HT, Vol. 2, 44:17-19, 44:22-45:1.**¹
2. Georgia Clark currently holds the following certifications in the State of Texas: English Language Arts and Reading (grades 8-12); English as a Second Language Supplemental (grades

¹ Citations to Hearing Exhibits are Exhibit No. (P# or R#), sometimes with page and line references (FWISD 0232) [bates numbers}. Citations to the hearing transcript are: HT, Vol. #, p:lines or TR

1-12); Elementary English (grades 1-8); Elementary Self-Contained (grades 1-8); Secondary English Language Arts Composite (grades 6-12); and Secondary Speech and Drama (grades 6-12). (Resp. Exhibit 2.)

3. Georgia Clark's annual appraisals demonstrate that she has been evaluated as an excellent teacher consistently throughout her employment at Fort Worth ISD. In addition, the accomplishments listed in her resume further highlight her many professional successes as a teacher. (Resp. Exhibits 3 and 28.)

4. Testing data that Georgia Clark aggregated for her students show that she has been successful during the 2018-19 school year in helping her students improve their testing scores. (Resp. Exhibit 21.)

5. Clark's evaluations in Exhibit R – 3 are all Proficient or Exceeds, including "Complies with policies and procedures", "Follows Verbal/written directives", and "contributes in a positive way to the school environment" referenced in her Evaluation Date: 3/23/2016.

6. Letters of praise from several of Ms. Clark's 2019 graduating seniors (18 out of 20 sent letters) indicate that many of her students admired her as a teacher, most of whom were Hispanic. (Resp. Exhibit 26.)

7. Letters of Recommendation from previous employment in other school districts show that she was well appreciated for her teaching before her time at Fort Worth ISD. (Resp. Exhibit 27.)

8. **Notice Letter:**

1. By letter dated June 13, 2019, the Board of Trustees of Fort Worth Independent School District gave written notice to Ms. Clark ("Notice" or "Letter" or "Notice Letter") that the termination of her continuing contract had been proposed, recommending that her employment be terminated for good cause pursuant to Texas Education Code Section 21.2 and District Board

Policies DF (Legal/Local) and DH (Local/Exhibit). (Exh P - 1.)

2. Specifically, the recommendation for termination was made under the following:

a. The grounds for the proposed termination are your statements during class periods on or about May 17, 2019, and comments publicly posted on social media, which violated the standards of ethical conduct for professional educators as adopted by the State Board for Educator Certification and District policy DH (Exhibit), and the District's electronic media use policy in DH (Local) & (Regulation). The public outcry from parents, students, and members of the local community in response to your public comments on the Twitter platform have caused substantial disruptions in operations at the campus where you were assigned to teach, as well as to District operations. The public outcry concerning the facts summarized below, as well as their notoriety within the Carter-Riverside High School and greater FWISD school communities, have undermined your ability to be an effective teacher for the District to such an extent so as to constitute good cause for the termination of your term employment contract with the District.

b. Additional grounds for the proposed termination are your inappropriate, offensive, demeaning, belittling, discriminatory and/or insensitive comments made to students in your classes based on race and/or ethnicity and 'or national origin and or immigration status and regarding your co-workers, including false statements regarding your school, co-workers, and the District. You had already been previously disciplined for offensive statements you had made in class regarding students of Hispanic ethnicity and/or Mexican national origin, and thus were on notice that such remarks would not be tolerated. Your conduct has violated District policies, federal law, and the Texas Educator Code of Ethics, and have been egregious, insubordinate, and constitutes good cause for termination.

3. The facts underlying the grounds for your proposed termination are as follows:

a. During the 2013-14 school year, while serving as a teacher at Western Hills High School, you were accused of referring to a group of Hispanic students as "Little Mexico" and a Caucasian student as "white bread." You were further accused of separating the students in your class by race ethnicity, color and stating that the Hispanic students were "Mexico" and the Caucasian and African American students were "America." You admitted to referring to the students as "Little Mexico." You also claimed that the class divided itself along racial lines and asserted that you told the students that you would not have Texas on one side and Little Mexico on the other side. The District's investigation substantiated the allegations that you referred to students as "Little Mexico" and "white bread." The District found that you made racially ethnically demeaning, belittling, offensive, and insensitive remarks to students in violation of Board policy and the Educator's Code of Ethics, and you were suspended without pay and reassigned to a different campus.

b. On May 17, 2019, a student reported to campus administration at Carter-Rivers High School that you made racially ethnically demeaning, belittling, offensive, intolerant and/or insensitive remarks to students during class. According to the reporting student, you stated that "the main ones that be bitching and moaning are illegal." The student also stated that you made several statements regarding illegal immigration in your class. According to the student, you stated that some people are illegally in the country and that "Mexicans should not enter our country illegally." Several students became upset at your statements. Following those statements, another student asked to use the bathroom, and you told the student to "show me your papers that are saying you are legal." The student reported that when students in the classroom objected that such statements were "racist and mean," you replied, "oh well, then

don't enter the country illegally."

c. A second student witness corroborated the first student's report that you asked a student "do you have your papers to go" to the restroom following your statements regarding illegal immigration.

d. On May 30, 2019, you were interviewed by the Office of Professional Standards regarding the allegations in paragraph 2 above. You acknowledged that a female student asked to go to the bathroom but claimed that you "requested to see her planner." You claimed that you said nothing further to the student and that "planners are required to leave class and have always been required since the beginning of the year."

e. On May 17, 2019, the same day as the incidents described in paragraph 2, tweets directed to President Donald Trump's Twitter account were posted under the Twitter handle Rebecca 1939 on a publicly available Twitter page. The tweets stated that the "Fort Worth Independent School District is loaded with illegal students from Mexico" and that "Carter-Riverside High School has been taken over by them." The tweets further stated that "[Anything you can do to remove the illegals from Fort Worth would be greatly appreciated." The poster provided two phone numbers and stated, "Georgia Clark is my real name."

f. One of the tweets on May 17, 2019 noted that the poster "contacted the feds here in Fort Worth a few months ago and the person I spoke with did not want to help me or even listen to me."

g. The May 17th tweets also claimed that "[d]rug dealers are on our campus and nothing was done to them when the drug dogs found the evidence." The tweets complained that the "campus police officer spends his time texting on his cell phone and doing the bidding of Jennifer Orona, Hispanic assistant principal who protects certain students from criminal

prosecution." The tweets alleged that Ms. Orona had committed unspecified acts of fraud and complained about how the Special Education Department at Carter-Riverside High School was being run. The tweets claimed that the District "knows about the issues and turns a blind eye to it."

h. On May 22, 2019, additional tweets directed to President Donald Trump's twitter account were posted under the Twitter handle ((Rebecca 1939 on a publicly available Twitter page. The tweets of May 22nd reminded President Donald Trump that the poster Cf. Rebecca1939 "asked for assistance in reporting illegal immigrants in the FWISD public school system" and asked for a contact to assist in " actively investigating and removing the illegals that are in [sic] public school system."

i. On or about May 29, 2019, the District learned of these tweets from a student or former student who saw them posted publicly. The District subsequently received or was tagged in comments on various social media websites, including Facebook and Twitter, and began to receive communications expressing concern and/or outrage regarding the tweets and the possibility that a school district teacher was attempting to have students removed from school.

j. The District's Office of Professional Standards opened an investigation into the matter and interviewed you as part of the investigation. During the interview, you admitted to investigator Harold Schuman that you had in fact voluntarily and intentionally posted the above-referenced tweets under the Twitter handle (!,Rebecca1939. You further stated that you believed the tweets were private messages sent directly to President Donald Trump's twitter account and did not initially realize the tweets were visible to the general public. Following the interview, you were placed on administrative leave with pay.

k. On or about May 29, 2019, the District's Superintendent was forced to respond to the community concern generated by your tweets in a voicemail message sent to all District parents. The purpose of the message was to reassure parents that all children are welcome in the Fort Worth Independent School District. The statement read as follows:

" In the past 24 hours, there has been much talk in the news and on the Internet about the use of social media by our staff. Our mission is to prepare ALL students for success in college, career and community leadership. Let me reiterate our commitment that every child in the District is welcome and is to be treated with dignity and respect. As we conclude the school year this Friday, please know we take this promise very seriously and your child's safety and well-being is always our number-one priority."

l. Numerous phone calls, along other types of communications were made to the Superintendent and the Board, as well as comments posted to the District ' s social media websites, which confirmed that your tweets were in wide circulation and that they cast the District and Carter-Riverside High School in a negative light to parents and members of the community. Many students, parents, and staff of Carter-Riverside High School and Fort Worth Independent School District viewed the tweets in question.

m. The tweets have been the subject of numerous local and national and international news articles and broadcasts, including by each of the local news networks (KDFI, KXAS, KTXA, and WFAA), the Fort-Worth Star Telegram, TheHill.com, Yahoo.com, MSN.com, the Washington Post, the Washington Examiner, the Washington Post, the New York Times, the New York Post, the LA Times, Fox News, CNN, ABC News, CBS News, NBC News, BET, Univision, and the BBC.

n. On or about May 29,2019, the Fort Worth Star-Telegram published an article titled "Fort Worth teacher on leave after sending anti-immigrant tweets to Trump, district says." The article included screenshots of the tweets referenced above, including one screenshot of an individual responding to your tweet by stating that "IM COMING TO

CARTER TO PAY YOU A NICE VISIT TOMORROW MRS. CLARK! JUST WATCH!!!"

This is only one example of the way in which your tweets have produced disruption in campus and/or district operations.

o. On or about the afternoon of June 4, 2019, the Fort Worth Star-Telegram Editorial Board published an opinion article entitled, "Fort Worth school board should fire teacher over Twitter rant on immigrants." The Fort Worth Star Telegram is the newspaper with the largest daily circulation in Fort Worth and enjoys widespread readership in our community. Moreover, many on the Editorial Board reside in and work in the Fort Worth community. In the article, the Editorial Board called for your termination and stated that your comments "betray not just bias against many of the students on her campus, where Hispanics make up nearly 90 percent of those enrolled, but ignorance of the school's and teachers' roles in ensuring that all children get the education they deserve."

p. During the Public Comment portion of the June 4, 2019, Board meeting, fourteen people, including parents, current and former students, and community members, expressed concern and serious reservations regarding your ability to fairly educate students at Fort Worth ISD without bias or discriminatory animus. No one spoke in favor or support of your actions, social media posts, comments, or positions.

q. Following the June 4, 2019 Board meeting, the District continues to receive numerous phone calls, emails, and other messages expressing outrage and concern regarding this matter, including some threatening violence and/or property damage.

r. Under District Policy DH (Legal) Fort Worth ISD employees are required to comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community. Each employee is required to

comply with the standards of conduct set out in District policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to his or her status as a District employee. Violation of any policies, regulations, or guidelines may result in disciplinary action, including termination of employment. Your employment contract also requires you to comply with all applicable state and federal laws, as well as District policies. Under federal law that has been clearly established since the 1982 decision of the U.S. Supreme Court in *Plyler v. Doe*, undocumented immigrant children residing in the United States have a right to attend public schools. Your conduct as described in this Notice violates applicable state and federal law, and District policy, and thus breaches the terms of your employment contract.

s. Under District Policy DH (Local)(Regulation) & (Exhibit), each Fort Worth ISD employee is required to perform his or her duties in accordance with state and federal law, District policy, and ethical standards promulgated by the State Board for Educator Certification. Each Fort Worth's employee is expected to recognize and respect the rights of students, parents, other employees, and members of the community and to work with others to serve the best interests of the District. Employee misconduct occurs when an employee engages in speech or expression made verbally and directly to students or co-workers that is demeaning or belittling, offensive, defamatory, or discriminatory based on race, color, ethnicity or national origin, as well as speech or expression through other means of communications, including electronic media, that is belittling, demeaning, offensive, defamatory, malicious, false, discriminatory based on race, color, ethnicity or national origin, or has the effect of causing emotional or physical harm to students, inciting violence or property damage, or is sufficiently severe, persistent, and pervasive

enough that the action creates an abusive and discriminatory educational or work environment.

t. Under District Policy DH (Regulation), Fort Worth ISO employees, as role models to District students, are responsible for their public conduct even when not acting as a District employee. Employees are "held to the same professional standards in his or her public use of electronic media [including Twitter] as for any other public conduct." DH (Regulation) further provides that when an employee communicates publicly on matters involving the District, the employee must clearly state that he or she is expressing his or her personal viewpoint and not an official position of the District unless expressly authorized otherwise. Moreover, "[i]f an employee's use of electronic media interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment." Additionally, "an employee is also responsible for maintaining privacy settings appropriate to the content" on any social media platform. If an employee elects to communicate using a social media network, the employee is still subject to the prohibition in District Policy DH (Exhibit) "against harming others by knowingly making false statements about a colleague or the school system."

u. Under District Policy FFH (Local), District employees are prohibited from discriminating against any student on the basis of specified protected categories, including race, ethnicity, and national origin. Discrimination against a student is defined as conduct directed at a student on the basis of those same protected categories. Moreover, federal law under Titles IV and VI of the Civil Rights Act of 1964 also prohibit discrimination on the basis of race and national origin. The U.S. Department of Justice and the U.S. Department of

Education in a Fact Sheet accompanying a May 8, 2014 Dear Colleague letter on enrollment practices for public schools advised that "[s]chool districts that either prohibit or discourage, or maintain policies that have the effect of prohibiting or discouraging, children from enrolling in schools because they or their parents, guardians are not U.S. citizens or are undocumented may be in violation of Federal law."

v. Under a resolution adopted by the Board of Trustees on February 28, 2017, "the Fort Worth Independent School District will strive to create the safest possible environments for its students and employees, providing them the foundation needed to learn, thrive, seek assistance and information, and reach each child's potential in an education-focused environment, free of insecurity and fear, for all its employees, students, and their families, regardless of their immigration status." The resolution particularly notes that "under the 1982 United States Supreme Court ruling (*Plyler v. Doe*, 457 U.S. 202), all children are entitled to a public education regardless of their immigration status or the status of their parents." This resolution plainly expressed that the Board wanted "our community to feel that schools and classrooms are safe, welcoming, and inclusive places for all students and families, regardless of their immigration status."

w. The statements made to students in your classroom on May 17, 2019 were racially ethnically intolerant, demeaning, belittling, offensive, and or insensitive and indicated a discriminatory animus toward students of Hispanic descent and/or students whose national origin is Mexico. Your statements demonstrated your unwillingness to educate and be inclusive of all students regardless of their immigration status as required by federal law. Such statements create a hostile educational environment for your students, in violation of District policy and the February 28, 2017 resolution of the Board of Trustees. Your conduct

undermines parent and student trust and confidence in your ability to fairly educate all students in your classroom, diminishing your effectiveness as a teacher in this District.

x. Moreover, you were previously suspended without pay and reassigned for making similar statements during the 2013-14 school year. Thus, it is apparent that you knowingly violated the standards of conduct for professional educators and District policy when you made the statements to students in your class in May of 2019. This conduct alone is sufficient to support good cause for terminating your employment contract with the Fort Worth Independent School District. Further, since you had actual knowledge that you were prohibited from making such statements to students from this past incident, you were insubordinate by repeating conduct you knew was prohibited.

y. The statements you publicly posted on Twitter on May 17, 2019, and May 22, 2019 were also racially ethnically intolerant, demeaning, and¹or insensitive and indicated a discriminatory animus toward students of Hispanic descent and/or students whose national original is Mexico or are undocumented immigrants. Under the United States Supreme Court's decision in *Plyler v. Doe*, public school districts are required to admit and educate students regardless of their immigration status. Your Twitter posts claiming that the "Fort Worth Independent School District is loaded with illegal students from Mexico" and that "Carter-Riverside High School has been taken over by them" and requesting assistance in "removing the illegals that are in [sic] public school system" indicate an unwillingness to educate the District students entrusted to your care, as required by federal law, District policy, and the explicit policy statement of the District's Board of Trustees. As described above, such conduct also has the likely effect of eroding parent and student trust in your ability to fairly educate all students in your classroom without bias.

z. Your comment that you "contacted the feds here in Fort Worth" regarding immigrant students on your campus violated federal law and District policy to the extent you disclosed any personally identifiable information regarding students or parents. School districts are not permitted to inquire into the immigration status of students or their parents or to take steps that would unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school. Your efforts to report undocumented students to federal authorities, and the widespread circulation of your tweets describing these attempts, is reasonably likely to have a chilling effect on undocumented students enrolling in or attending Fort Worth ISD schools in violation of federal law. To the extent you disclosed or intended to disclose personally identifiable student information, without legal authorization, that you obtained from education records, your actions also potentially violated the Family Educational Rights and Privacy Act (FERPA) and District Policy FL(Local), which defines what personally identifiable student information may be released as directory information, and otherwise prohibits the disclosure of personally identifiable student information contained District student education records.

aa. Your conduct also directly undermines the Board of Trustee's stated goal to create and maintain "an education-focused environment, free of insecurity and fear, for all its employees, students, and their families, regardless of their immigration status." By publicly posting comments that expressed a discriminatory animus or intolerance toward District students of Hispanic ethnicity and/or Mexican national origin, which you made publicly accessible to the Ft. Worth and school district community, and indeed, to a national and international audience, and which circulated among parents, students, and staff, you have severely diminished your ability to effectively perform your job duties as a teacher in FWISD.

ab. Your conduct also violated District policy and professional standards of ethical conduct owed to your colleagues and Fort Worth ISD. Your false statement that "[d]rug dealers are on our campus and nothing was done to them when the drug dogs found the evidence" implies that the District is ignoring its responsibility to provide a safe learning environment for District students and casts a negative light on both Fort Worth ISO and your colleagues at Carter-Riverside High School. You further posted false and potentially defamatory statements regarding Ms. Jennifer Orona, your immediate supervisor at Carter-Riverside High School. The District has no indication or evidence that Ms. Orona "protects certain students from criminal prosecution" or has engaged in any acts of fraud, nor have you brought any such issues to the attention of the District. Your false statement that the District is aware of but turns a blind eye to issues involving criminal conduct on campus also casts the Fort Worth ISD in a negative light. Finally, your identification of Ms. Orona's race/ethnicity in the context of your tweet potentially indicates discriminatory animus toward Ms. Orona. There is some evidence that you treated Ms. Orona more harshly than another similarly situated Caucasian assistant principal, based on her Hispanic ethnicity or Mexican national origin, by complaining that she was not promptly handling your student discipline referrals, when you did not similarly complain about the Caucasian assistant principal who was significantly slower to handle your student discipline referrals than Ms. Orona was.

ac. Your statements have also caused, and will likely continue to cause, significant disruption of the operations of the Fort Worth ISD. At least one individual threatened to come onto campus in response to one of your tweets, and the District has also received messages threatening violence and property damage. District staff are being forced to field calls and other messages of concern from parents and community members as well as representatives

of the media, disrupting the efficient operation of everyday District business.

ad. By engaging in the conduct described above, your conduct and communications fell below the following standards promulgated by the State Board for Educator Certification (SBEC) in the Educator's Code of Ethics [see District Policy DH{Exhibit}; Tex. Educ. Code§ 21.041(8); 19 Tex. Admin. Code§ 247.1(b), (c), to wit:

i. Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws.

ii. Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.

iii. Standard 2.2. The educator shall not harm others by knowingly making false statements about a colleague or the school system.

iv. Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.

v. Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

vi. Standard 3.2. The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely effects or endangers the learning, physical health, mental health, or safety of the student or minor.

vii. Standard 3.3. The educator shall not intentionally, knowingly, or recklessly misrepresent facts regarding a student.

viii. Standard 3.4. The educator shall not exclude a student from participation

in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender, disability, national origin, religion, family status, or sexual orientation.

9. By a letter of June 14, 2019, Clark gave notice to the Board of Trustees of her protest of its proposed termination of her contract. Exh. R-14.

10. In a letter dated June 26, 2019 received by TEA on June 28, 2019, Ms. Clark appealed the District's recommended termination of her employment contract and requested the appointment of an Independent Hearing Examiner for a hearing on the recommended termination pursuant to Chapter 21, Subchapter F of the Education Code Exh. R-17.

11. By letter to TEA of June 28, 2019, counsel for the parties advised TEA of their agreement to and request for appointment of Robert C. Prather, Sr. for this case.

12. On July 01, 2019, Robert C. Prather, Sr. was appointed as the Independent Hearing Examiner for this case, which appointment he accepted. See Exhibits H-1 thru H-5.

13. Except as the Hearing Officer, Mr. Prather was not employed by the District and neither Mr. Prather, nor a law firm with which he is associated, served as an agent or representative of the District, an employee in a dispute between the District and an employee, or an organization of school employees, school administrators, or school boards.

14. A hearing before Robert Prather, the hearing examiner appointed by the Commissioner of Education, was held on August 5 and 6, 2019. Exh. H-3

15. The reasons for Ms. Clark's recommended termination, set forth in the June 13, 2019 letter, do not constitute reasons violating Board policies and do not constitute good cause for the recommended termination of her employment contract with the District. At the hearing, the District failed to carry its burden of showing by a preponderance of the evidence that good cause exists to terminate the continuing employment of Ms. Clark. The evidence falls short of the good

cause standard in the following respects, including without limitations.

16. Findings related to the Board's Letter are set out below, but are not exclusive or exhaustive of the other Findings contained within this Recommendation:

A. Board Facts, paragraph 1:

No credible evidence has been submitted in this hearing to establish the District's allegations in its Letter about an incident occurring over 5 years ago, including without limitations, no witnesses testified in this hearing with personal knowledge of the events, except Clark. There is no written reprimand, no written directives, no written plan, no written suspension with or without pay, and no pay deduction.

B. Board Facts, paragraph 2, 3 and 4:

There is not credible evidence that supports, by a preponderance of the evidence that on May 17, 2019 Clark made racially/ethnically demeaning, belittling, offensive, intolerant and/or insensitive remarks to a student or students during class. Student 1 was not credible and acknowledged that she was not sure about her statement about "the main ones...". Student 2 said a group of students were involved in a discussion about immigration, which did not include Clark who was working with other students, and that a girl ask to go to the restroom. These conflicting allegations do not establish good cause for termination.

C. Board Facts, paragraph 5 – 17:

Clark's Tweets have not been proven to be knowingly untrue or false or defamatory. As Clark stated, they were based upon information she had reason to believe was accurate from sources she believed were reliable and upon her own observations and information and reasonable belief.

While there was an increase in activity in tweets, emails, calls, letters and news coverage,

the Board overstates this activity as being all outrage and negative and substantially disruptive. As the District well knows there were communications both ways, with some of the material the District identified being more favorable to Clark than against her. Additionally, while there were approximately 14 people who appeared at the Board meeting, that is an insignificant number compared to the 80,000+ students and employees in the District. Additionally, as the District's witnesses testified, there was a peak in the activity on May 29 with the continuation through a few days after the Board meeting of June 4 and has been basically nonexistent since.

D. The District must take some responsibility for the increased activity in response due to the erroneous information disseminated to the public and the press by the District which was either false, unverified, undocumented, conflicting, unsubstantiated or incomplete which was repeated at the Board meeting and which is contained in the Board's Letter. In addition, the District so willingly and quickly disseminated to the public and press information about Clark which was unverified, incomplete and not accurate, prior to the Board meeting and completion of its investigation and at the same time failed and refused to provide the same information to Clark until after June 27, which raises due process concerns.

E. Clark's conduct described in the Notice Letter does not violate applicable state and federal law, District policy, and does not breach the terms of her employment contract and does not fall below the standards of the Educators Code of Ethics.

F. It has not been proven that Clark's statements were discriminating, racially ethnically, intolerant, demeaning, belittling, offensive and/or insensitive and indicated a discriminatory animus toward students or demonstrated her unwillingness to educate and be inclusive of all students and that she was not and could not be an effective teacher in this District.

G. It has not been proven that in May 2019, Clark made similar statements to an

incident in 2013 – 14 and that she was insubordinate.

H. Clark's Tweets were free speech.

I. Clark did not disclose or intend to disclose personally identifiable student information.

J. Clark's Tweets and alleged conduct of May 17, 2019 do not violate District policies, federal or state law, or the Texas Educator Code of Ethics and were not egregious and insubordinate and do not constitute good cause for termination.

17. Although a number of FWISD policies were cited for the Proposed Termination, they were all based on the same incident(s). The proposed action would not have been taken absent the Tweets and alleged May 17, 2019 class incident.

18. Ms. Clark's continuing contract requires that "The Teacher shall comply with, and be subject to, state and federal law and District policies, rules, regulations, and administrative directives as they exist and may hereafter be amended. The Teacher shall faithfully perform to the satisfaction of the District all duties set forth in the job description or as assigned." **Exhs P1, R1, p.5.**

19. Ms. Clark was previously assigned to Western Hills High School as a reading teacher for the 2013-14 school year. **Ex. R28; HT, Vol. 2, 72:21-22.**

20. During the 2013-14 school year, some students alleged that Ms. Clark called some Hispanic students "Little Mexico," and called a Caucasian student "White Bread." **Ex's P12, P13; HT, Vol. 1 53:18-54:1, 57:16-58:3; Vol. 2 109:03-14**

21. Ms. Clark described the incident differently but admitted using the words "Little Mexico" in a classroom setting.

22. Petitioner failed to prove that Ms. Clark actually made racially/ethnically demeaning

comments to her students in 2013. FWISD brought no witnesses to prove the allegation. An Interoffice Memo summarizing an investigation was not admitted for the truth of the matters asserted in it. Ms. Clark was not asked to discuss what may have been said in the class. Importantly, there is no record that she was ever given a Letter of Reprimand or otherwise advised about what the District thought she had done wrong. Ms. Clark was transferred to another campus, but a transfer is not a punishment.

23. The alleged 2013 – 14 Incident:

There has not been credible evidence submitted to establish what the incident and its surrounding an activity actually were.

No credible evidence of any written directive, reprimand, suspension or deduction of pay has been submitted to establish the activity and the Districts directive related to that activity given to Clark.

Therefore, there is not a basis on which to claim any alleged subsequent activity by Clark is similar conduct or directives which she allegedly has failed to follow.

24. The alleged May 17 and 21, 2019 Incidents:

The evidence submitted does not establish by a preponderance of the evidence that Clark's alleged conduct even occurred as alleged or was similar to the 2013 – 14 incident.

The testimony of the students was conflicting and conflicted with Clark's statement of what happened.

Not all of the students who are in the class testified, and the reports of student statements, not admitted for the truth, were conflicting including that it didn't happen or did happen. For instance, Student 2 says it was a group of students who were talking about immigration.

The students testifying at the hearing in their depositions “believed” or “felt” or it was their view or assumption as to what was meant.

Student 1 was unsure about whether “papers” or “planner” was used and was unsure about any statement of “moaning...”.

The students alleged change in attitude about Ms. Clark basically came after May 29 when they began hearing or reading the Tweets.

The credible evidence does not establish by a preponderance of the evidence what incidents occurred and that whatever occurred was misconduct by Clark and has not established a basis for good cause for termination of Clark.

25. On January 13, 2014, Ms. Clark was transferred to Diamond Hill-Jarvis High School.

Ex’s P12, R28, HT, Vol. 2, 107:14-19; 111:1-6.

26. Since there is no evidence presented that Ms. Clark was given any reprimand or suspension after the 2013-14 investigation, FWISD failed to prove that Ms. Clark was placed on notice that her conduct had been inappropriate and what it was.

27. On February 28, 2017, the FWISD Board of Trustees adopted a resolution to designate all Fort Worth Independent School District schools as welcoming and safe. The resolution provided that “the Fort Worth Independent School District will strive to create the safest possible environments for its students and employees, providing them the foundation needed to learn, thrive, seek assistance and information, and reach each child’s potential in an education-focused environment, free of insecurity and fear, for all its employees, students, and their families, regardless of their immigration status.” The resolution particularly notes that “under the 1982 United States Supreme Court ruling (*Plyler v. Doe*, 457 U.S. 202), all children are entitled to a public education regardless of their immigration status or the status of their parents.” The

resolution expressed that the Board wanted “our community to feel that schools and classrooms are safe, welcoming, and inclusive places for all students and families, regardless of their immigration status.” **Ex. P9; HT, Vol 1, 88:18-21.**

28. The February 28, 2017 resolution is a policy statement of the FWISD Board of Trustees. **Ex. P9; Vol. 1, 89:4-6, 210:21-212-3.**

29. The Board of Trustees adopted the resolution to provide guidance to students, parents, and the community regarding the FWISD’s position on undocumented students in FWISD schools. **Ex. P9; HT, Vol. 1, 88:22-89:3.**

30. The Board’s intent for the resolution was to send a clear message that every student should feel safe and is welcome in Fort Worth ISD, regardless of the student’s immigration status. **Ex. P9; HT, Vol. 1, 89:11-17.**

31. During the 2018-19 school year, Ms. Clark was assigned as an English teacher to Carter-Riverside High School (CRHS). **Ex. R28; HT, Vol. 2, 44:17-19.**

32. Student 1 reported to CRHS administration that Ms. Clark made upsetting statements during her 8th period English class on May 17, 2019 that “the main ones that be bitching and moaning are illegal” and made several statements regarding illegal immigration. Following those statements, another student asked to use the bathroom, and you told the student to “show me your papers that are saying you are legal.” **Ex. P29, 6:6-18**

33. Student 1 testified that in May of 2019, the student did not find Ms. Clark’s classroom a safe, welcoming, and inclusive place for him/her, and was not a place where the student was free from insecurity and fear. **Ex. P29** FWISD 02648:15-23, FWISD 02653:22—02655:16, FWISD 02660:16—02661:18.

34. Student 1 testified that his/her opinion that Ms. Clark’s classroom was not a safe,

welcoming and inclusive place where he/she was free from insecurity and fear, was partly a result of Ms. Clark's statements in class, and partly a result of Ms. Clark's tweets. **Ex. P 29.**

35. The hearing examiner finds that the testimony and written statements of Student # 1 are not credible and that Student 1's testimony was motivated by personal animus or bias against Ms. Clark. **Ex's P14, P15, P 29.**

36. Student 2 testified that following a discussion of immigration, a female student asked to go to the restroom and Ms. Clark asked the student to show Ms. Clark her papers. **Ex. P30 7:18--9:1.**

37. Carter-Riverside High School had a policy that required the use of student planners as a pass to go to the restroom. **Ex's R22, R23; HT, Vol. 2 17:1-11.**

38. Students 1 and 2 both testified that they "believed" Ms. Clark's statements were in reference to immigration papers and not student planners. **Ex. P29, 6:2—7:16; Ex. P30 13:24—17:1** (Student 2) Student 2 testified Clark did not use the term "immigration papers".

39. Student 2 testified that after May 17 Ms. Clark's statements made him/her uncomfortable, but not at time they were made, because of things Ms. Clark said towards the end of the school year. But see discussion below and all of Student 2's testimony. **Ex. P30, FWISD 02682:18—02683:9, FWISD 02688:24—02689:8.**

40. Student 1 testified she learned about Ms. Clark's tweets from reading news stories about her tweets and testified that the media reports about Ms. Clark made her see Ms. Clark and her comments about immigration differently and made her think Ms. Clark was not a good teacher after all. **Ex. P30, FWISD 02692:5—02693:21.**

41. The hearing examiner finds that the testimony of Student 2 was credible and conflicted with Student 1, sufficient to cast doubt on Student 1's statements. **Ex. P 30.**

42. In May 2019, there were conflicting accounts from two students about an incident when Ms. Clark allegedly requested to see “papers” from a student when the student asked to go to the bathroom. A paper “Planner” is required by school policy to be taken by any student when they leave a classroom to go to the restroom. (Resp. Exhibit 22 & 23.) Both student witnesses acknowledge the rules about Planners. One student believed the Clark’s statement was intended to reference immigration documentation and recalled it was a boy who went to the bathroom. The second student did not know whether she was referencing immigration since only students had been talking about immigration earlier in the class. He recalled a girl went to the bathroom. Since the accounts conflict and the circumstances of the alleged comment are unclear, FWISD failed to prove that Ms. Clark made any clearly inappropriate comments or good cause

43. According to Clark, on May 17, 2019:

a. The group of students who were caught up on their work (Group 1) were discussing immigration amongst themselves while Clark was working with the other group of students who were trying to get caught up on their assignments and get the work completed (Group 2).

b. While Clark was working with the Group 2 students, 1 of the girl students from Group 1 asked to go to the bathroom.

c. Clark said, “your planner, please”.

d. The girl said, smiling, “I have my papers.”

e. Clark said, “I’m glad to know you have your papers, but all I need is your planner for you to leave the room.” According to Clark, then the class laughed.

f. Clark was not focused on what Group 1 was discussing about immigration or where “papers” came from.

44. Student 1, a senior

- a. Friday, May 17, alleges that Clark was giving a lesson to them and brought up about people are illegal in our country.
- b. Alleges her classmates started to get upset and saying things towards her (Clark).
- c. Student 35 cut her (Clark) off and asked if he could go to the restroom.
- d. Clark stated Student 35 needed to show her his papers saying that he was illegal, and he could go if he was legal.
- e. Student 1, admitted on cross-examination, "**I am not sure, sir.**" When asked if it was possible that Clark asked to see the Planner.
- f. Tuesday, May 21, alleges that Clark made statements about Student 1 and her computer work and did not feel safe because of what Clark said and what Clark let another student (Student34) say to Student 1.
- g. Exhibit P – 9, P. 12, L. 10:
- h. "And when she sat me at the computer, Student 34, which is a girl that's in my class, 1 of my classmates, and asked Ms. Clark why the computers there. And she was like, "it's for the people who don't do their work." Then she had pointed to me. I did not respond."
- j. Orona asked Student 34 to provide a written statement. She did not testify.
- k. However, in her written statement, exhibit 2 to Student 1's Deposition, Exhibit P – 29, Student 1 wrote: "... Student 34 had replied "for the people who don't do their work" then she had pointed to me." Student 34 made the statement and did the pointing to Student 1, not Ms. Clark.
- l. Student 1 was "**unsure**" about the 2nd part (about "bitching and moaning") of her May 21st statement, Exhibit 2. See Exhibit 29, page 21, line 5.
- m. In her deposition page 12, Student 1 states the incident about the computer occurred

on May 21, a Tuesday. However, on page 30 of her deposition, she claims it occurred on Monday, which is May 20.

- n. Student 1 is not credible:
- o. Upset with Clark because Clark had called Student 1's parents.
- o. Earlier in the year, Student 1 had gotten in trouble in Clark's class for talking back.
- p. Her demeanor, including facial expressions.
- q. Had the assistant principal's (Orona) phone number to call at any time, which other students did not have. Orona and Clark may have had differences on issues in the past.
- r. Orona gave her permission to leave class when she wanted to and study in the library.
- s. Orona has a relationship with Student 1's mom.
- t. Contradicts her written statements.
- u. Orona appears to have assisted Student 1 with the statements, including notations and dating the statements.
- v. In Exhibit 1 to Student 1 deposition, exhibit 29, Student 1 did not name which classmate asked to go to the restroom (shown as "Unknown" on Exhibit 1). However, in her deposition of July 25, 2019, Student 1 said it was Student 35, a male, who asked to go to the restroom.
- w. Student 2 statements and Clark's contradict Student 1.
- y. The Group 1 students were having their own discussion about immigration while Clark was working with other students (Group 2).
- z. a girl, Student 39, not a boy asked to go to the restroom.
- aa. Clark's class was a good classroom a good environment, but His opinion changed

after 5/17, after he saw the news coverage and the Tweets.

bb. Student 2, deposition, Exhibit 30:

cc. Student 2 claims he felt fine in Clark's class until the end of the school year when Student 39, a female, asked to go to the restroom and Ms. Clark said she needed her papers, which he felt was about immigration.

dd. Clark made no other statements about immigrants that made him feel uncomfortable.

ee. Student 2 was shown the Tweets of Clark sometime after this Student 39 incident but does not recall how he reacted.

ff. Student 2 did not give a written statement about Ms. Clark.

gg. He said Clark was a good teacher, always in a good mood and never had any problems with the class prior to this Student 39 incident.

hh. He did not have Ms. Orona's telephone number or any other administrator's phone number and did not know of anyone else who had Ms. Orona's phone number.

ii. No one else in the classroom yelled out anything or got upset when he claims Clark asked to see her papers.

jj. He never heard any student in the class yell "Ms. Clark, your racist".

kk. Prior to Student 39's request the students were talking about immigration.

ll. Clark did not say anything about immigration during the conversation that offended him.

mm. Clark did not say "immigration papers".

nn. That was Student 2's interpretation that Clark was referencing immigration.

oo. Student 2 has not heard Clark say anything offensive about any other ethnic group.

pp. After the news stories came out about Clark, he changed his feelings about Clark.

qq. Clark was equally fair to all students in her class.

45. On May 17, 2019, the same day as the incident reported by Student #1, five tweets directed to President Donald Trump's Twitter account were posted under the Twitter handle @Rebecca1939 on a publicly available Twitter page. **Ex's P17, R4; HT, Vol. 1, 36:1-14.**

46. Outside of her workplace, Ms. Clark has maintained a Twitter account since 2017. The Twitter account had very few followers. Clark did not understand or believe it was a publicly available Twitter account. Transcript Vol. 2, p. 52, ll. 5-12.

47. Clark's official duties with the District did not include the Tweets and the statements made therein, including attempting to report what she believed may have been unlawful or improper conduct.

a. The Tweets were not made pursuant to Clark's official duties with the District.

b. Clark's Tweets are statements of a citizen on a matter of public concern protected by the United States Constitution and do not contravene or impair policies or proper performance of the District's functions.

c. The District did not have an adequate justification for treating Clark's Tweets differently from any other member of the general public.

d. Clark's Tweets were analogous to speech by non-public employees, for and against, on matters of public concern. Speech about alleged corruption, impropriety, or other malfeasance, including on the part of officials concern matters of public import, even when about a public employee's superiors. *Conaway v. Smith* 853 F.2d 789 (10th Cir. 1988); *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct.1731 (1968); *Connick v. Myers*, 461 U.S. 138, 103 S.Ct. 1684 (1983); *Cutler v. Steven F Boston State University*, 767 Fed 3rd 462 (5th Cir. 2014).

- e. Clark's Tweets were not within the scope of Clark's duties.
- f. Clark's Tweets were not engaged in a course of conduct subject to the District's control.
- g. Clark made the Tweets on her own initiative, intending them to go only to the person she was addressing, Pres. Trump, not the public.
- h. Clark made the Tweets within an independent course of conduct not intended by Clark to serve any purpose of the District.
- i. Clark was not employed by the District to write or send the Tweets.
- j. Any citizen could have sent the Tweets.
- k. Clark's Tweets were not false or defamatory statements knowingly or recklessly made by Clark.
- l. The Clark Tweets were intended to be sent to a specific person about matters of public concern.
- m. Clark believed that the content of her Tweets were based upon information which she personally knew or information she had received and believed were reliable.
- n. Clark did not know or understand that other people could read her Tweets even if she did not send the Tweets to other people.
- o. Clark did not know or understand that the District had the capability to and would search for her Tweets, emails and other social media.
- p. Clark made the Tweets when she was:
 - 1. not performing an official duty,
 - 2. not in the course of performing her employment,
 - 3. not performing work assigned by the District.

4. not on District property.

5. not at a District activity.

6. not using District equipment, the phone was her own.

7. not using District Internet or other communication facilities.

8. not in the presence of or communicating with students or their parents or District personnel.

9. not intending to communicate the Tweets to anyone except the person to whom she had addressed it, Pres. Trump.

q. Clark did not intend the Tweets to be made publicly and did not understand the Tweets were public as alleged by the District. Therefore, D H (Regulation) does not apply. Clark did not violate D H (Regulation).

r. The Tweets have not affected her effectiveness as a teacher.

s. Clark's Tweets have not been shown to be nor can they be presumed to have in any way either impeded Clark's proper performance of her daily duties in the classroom or have substantially interfered with the regular operation of the District generally to support good cause for her termination.

t. The Tweets do not advocate or challenge the teaching of or the refusal to teach children who are present.

u. The Tweets are not addressing what action if any may occur concerning the issue of the legal or illegal presence of a person who is being taught, as required.

v. The Tweets are addressing a 2nd issue of whether illegal activities such as illegal drug distribution is taking place and what to do about it.

w. There is no evidence of Clark refusing to teach any student present at any time.

- x. Clark has never refused to teach a student for any reason.

50. Retaliation against Clark:

- 1. Clark made the Tweets as a private citizen on a matter of public concern;
- 2. Clark's interest in the speech outweighs the District's interest in the efficient provision of public services;
- 3. Clark has suffered an adverse employment action, being the District proposing to terminate her contract; and
- 4. Clark's Tweets precipitated the adverse employment action by the District against Clark.

51. Following the Tweets:

- 1. Clark's contract as a teacher was proposed for termination.
- 2. Clark was an effective teacher, especially with those who were having difficulty making their grades and passing tests.
- 3. There is no evidence that the Tweets interfered with or involved Clark teaching.
- 4. There is no credible evidence that:
 - a. Clark reported anyone to be any alleged illegal immigrant.
 - b. Clark asked students if they were an illegal immigrant;
 - c. Clark failed to teach any student assigned to her to teach because they were an illegal immigrant or Clark may have thought they were an illegal immigrant or any reason, for that matter;
 - d. Clark failed to maintain effective working relationships with her colleagues prior to termination.
 - e. Furthermore, Clark believes that she can establish, re-establish any alleged

lost confidence and continue to maintain working relationships and be effective with students, parents and her fellow workers.

f. By being put on leave and proposed for termination without completion of an investigation, Clark was prevented from showing her ability to continue to be an effective teacher.

g. There has been no social media or activity about Clark since the few days before and after the June 6 Board meeting.

52. Clark was not aware that anyone could see her Tweets which she thought she was sending directly to Trump.

53. No one at District asked Clark to explain the Tweets.

54. Clark has had a Twitter account since 2017, having sent a total of about 50 Tweets. She has 11 followers on her Twitter account.

55. Clark is not “savvy” with Twitter.

56. One of the May 17, 2019 tweets stated that the “Fort Worth Independent School District is loaded with illegal students from Mexico” and that “Carter-Riverside High School has been taken over by them.” The tweet also claimed that “[d]rug dealers are on our campus and nothing was done to them when the drug dogs found the evidence.” **Ex’s P17, FWISD 0191, R4.**

57. The tweets on May 17, 2019 further stated that “Anything you can do to remove the illegals from Fort Worth would be greatly appreciated.” This tweet provided two phone numbers for the tweeter and stated, “Georgia Clark is my real name.” **Ex’s P17, FWISD 0192; R4; HT, Vol 1, 36:15-22.**

58. The May 17, 2019 tweets continued by stating “I need protection from recrimination should I report it to the authorities, but I do not know where to turn. I contacted the Texas Education

Agency and then my teacher organization. Texas will not protect whistle blowers. The Mexicans refuse to honor our flag.” **Ex’s. P17, FWISD 0196, R4; HT, Vol. 1, 37:1-11.**

59. One of the tweets on May 17, 2019 noted that the poster “contacted the feds here in Fort Worth a few months ago and the person I spoke with did not want to help me or even listen to me.” The tweet complained that the “campus police officer spends his time texting on his cell phone and doing the bidding of Jennifer Orona, Hispanic assistant principal[.]” **Ex. R4, 0001.**

60. Another May 17th tweet alleged that Ms. Orona protected certain students from criminal prosecution and had committed unspecified acts of fraud. The tweet complained about how the Special Education Department at Carter-Riverside High School was being run and claimed that the District “knows about the issues and turns a blind eye to it.” **Ex. R4, 0002.**

61. On May 22, 2019, two additional tweets directed to President Donald Trump’s twitter account were posted under the Twitter handle @Rebecca1939 on a publicly available Twitter page. **Ex’s. P17 FWISD 0195-0196, R4, 0001.**

62. The tweets of May 22nd reminded President Donald Trump that the poster @Rebecca1939 “asked for assistance in reporting illegal immigrants in the FWISD public school system” and asked for a contact to assist in “actively investigating and removing the illegals that are in [sic] public school system.” **Ex’s. P17, R4; HT, Vol. 1 37:12-38:5.**

63. Twitter is a social media platform and is a way for individuals to communicate with others who have a Twitter account. **HT, Vol. 2, 23:19-24:3**

64. Unless a Twitter user makes their profile private, the user’s posts on Twitter are available to the public. **HT, Vol. 2, 24:23-25:1, 27:7-17.**

65. FWISD testified Ms. Clark’s Twitter account and tweets were available to the public. That was not known to Clark. **HT, Vol. 2, 26:17-25.**

66. In the spring of 2019, Ms. Clark began posting Twitter messages (on social media) directed at @realDonaldTrump (the Twitter account for President Donald Trump) that expressed her views on matters of public concern, including illegal immigration, its effect on drug dealing on her campus, and possible improper conduct on her campus by an administrator. Ms. Clark believed her messages were private messages sent to the President's Twitter account.

67. FWISD failed to prove that any statements made in the Twitter posts were false or defamatory.

68. Except for the comments Ms. Clark posted on Twitter, she would not have been proposed for termination.

69. The hearing examiner finds that Ms. Clark's testimony that the tweets she addressed to President Trump's Twitter account on May 17 and May 22, 2019, were "primarily" about drugs on the campus of Carter-Riverside High School, and not about illegal immigrants, was credible. **Ex's P17, R4, HT, Vol. 2, 53: 7—55:4, 57: 25-58:19, 85:2-93:16.**

70. FWISD Board Policy DH (REGULATION) requires when communicating publicly, an employee who makes statements concerning matters involving the FWISD using electronic media to clearly state that the posting expresses personal viewpoints and not an official position of Fort Worth ISD, unless the employee has express permission otherwise. **Ex. P7; HT, Vol. 1, 148:21-149:2.**

71. The tweets sent by Ms. Clark on May 17, 2019, and on May 22, 2019, pertained to matters involving FWISD but were not communicated publicly by her and were not intended to be communicated publicly.

Ms. Clark did not have express permission or authorization to make statements for FWISD using electronic media concerning matters involving Fort Worth ISD. **Ex. P7, HT, Vol. 1 149:11-17.**

72. FWISD Board Policy DH (Local) provides:

An employee shall be held to the same professional standards in his or her public use of electronic media as for any other public conduct. If an employee's use of electronic media violates state or federal law or District policy or interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment. **Ex. P5, HT, Vol. 1, 144:22-145-5, 145:14-24.**

73. Under FWISD DH (Local), "electronic media" includes all forms of social media, such as . . . social network sites." **Ex. P5; HT, Vol. 1, 145:6-13.**

74. FWISD Policy DH (Regulation) also provides that Fort Worth ISD employees, as role models to District students, are responsible for their public conduct even when not acting as a District employee. Employees are "held to the same professional standards in his or her public use of electronic media [including Twitter] as for any other public conduct." Moreover, "[i]f an employee's use of electronic media interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment." Additionally, "an employee is also responsible for maintaining privacy settings appropriate to the content" on any social media platform. If an employee elects to communicate using a social media network, the employee is still subject to the prohibition in District Policy DH (Exhibit) "against harming others by knowingly making false statements about a colleague or the school system." **Ex. P7; HT, Vol. 1, 148:6-149:2, 149:18-150:2.**

75. Student 1 and Student 2 both testified that, at some point, students at Carter-Riverside High School became aware of Ms. Clark's tweets of May 17 and 22, 2019, and were sharing them with other students. **Ex. P29, FWISD 02658:21—02660:15; Ex. P30, FWISD 02647:28—02648:9.**

76. Ms. Clark's statements posted on the social media site Twitter on May 17 and 22, 2019, regarding Fort Worth ISD, and Carter-Riverside High School, did not violate District Board Policy DH (Local), and administrative regulation DH (Regulation); the statement of District policy adopted by the FWISD Board of Trustees on February 28, 2017, on the District's commitment to creating a welcoming, inclusive and safe environment for all students and parents, regardless of immigration status; and were not contrary to clearly established federal law regarding resident student access to public schools, regardless of immigration status. **Ex. P5, P7, P9, HT, Vol. 1, 88:18-21, 197:11-198:17, 212:12-20.**

77. On the evening of May 28, 2019 and the morning of May 29, 2019, Carter-Riverside High School and FWISD central administration were alerted to Ms. Clark's tweets by various parents, students, former students, staff, and members of the community. **Ex. P20; HT, Vol. 1, 34:16-24, 136:3-14, 157:8-13, 203:21-204:4, 212:23-213:3, Vol. 2 10:17-11:15, 12:6-11.**

78. The District began to receive, or was tagged in, various comments on assorted social media websites, including Facebook and Twitter, and began to receive communications expressing concern, support and/or outrage regarding Ms. Clark's tweets and the school district. **Ex. P20, P22, P24; HT, Vol. 1 39:9-19, 136:15-25, 157:8-13, 203:21-204:4, Vol. 2 26:17-27:6.**

79. The Office of Professional Standards ("OPS") is the department within Fort Worth ISD that receives and investigates allegations of employee misconduct. **HT, Vol. 1 40:5-25.**

80. OPS provides information acquired in its investigations of employee misconduct to decisionmakers within Fort Worth ISD administration, known as the Case Review Committee. The Case Review Committee is made up of Ms. Rincon, the Chiefs, other district leadership, and sometimes another attorney. **HT, Vol. 1, 40:5-25.**

81. Disciplinary decisions are made as part of a collaboration of the Case Review Committee.

HT, Vol. 1, 41:17-21.

82. On May 29, 2019, OPS opened an investigation into the matter and interviewed Ms. Clark as part of the investigation. **HT, Vol. 1, 41:25-42:8.**

83. During the interview, Ms. Clark admitted to investigator Harold Schuman that she had in fact voluntarily and intentionally posted the tweets shown in Exhibit P17 and Exhibit R4, under the Twitter handle @Rebecca1939. **Ex's P12, P17, R4; HT, Vol. 1, 42:9-16.**

84. Ms. Clark believed these tweets were private messages sent directly to President Donald Trump's twitter account and did not realize the tweets were visible to the general public and did not mean for them to be. **Ex. P12; HT, Vol. 2, 51:15-20.**

85. Following the interview, without being asked to explain the Tweets, Ms. Clark was placed on administrative leave with pay by the Case Review Committee. **Ex. P12; HT, Vol. 2, 61:17-21.**

86. The Case Review Committee met on May 29, 2019 and reviewed information obtained by OPS in the initial investigation. Committee members continued to receive information regarding the Clark matter throughout the day. **HT, Vol. 1, 42:17-44:2.**

87. The Case Review Committee also considered historical information regarding Ms. Clark, including the incident from the 2013-14 school year, which was inaccurate and incomplete. **HT, Vol. 1, 44:14-25, 53:3-6, 66:3-6.**

88. On the morning of May 29, 2019, Fort Worth ISD began receiving inquiries from members of the media who had seen Ms. Clark's tweets posted on May 17 and 22, 2019. Clint Bond, the Executive Director of External and Emergency Communications responded to these inquiries that Ms. Clark was employed by FWISD and had been placed on administrative leave while FWISD investigated the matter. **Ex. P25; HT, Vol. 1, 39:15-40:1, 157:8-13.**

89. The media was aware of Ms. Clark's tweets and making inquiries to the District before

Fort Worth ISD had had an opportunity to interview Ms. Clark regarding the tweets. **HT, Vol. 1, 39:23-40:4.**

90. Beginning on May 29, 2019, members of the media, including the Fort Worth Star-Telegram, also began to file written requests for information regarding Georgia Clark and the tweets under the Texas Public Information Act. **Ex's P25, R6, HT, Vol. 1, 101:1-19, FWISD 01038-01073.**

91. Late in the afternoon on May 29, 2019, as a result of the many communications to the District from the community regarding the allegations regarding Ms. Clark's tweets and other conduct or communications with students, Dr. Kent Scribner, FWISD Superintendent, determined it was necessary for him to issue a public statement to reassure the community, in a voice/email message sent to all FWISD parents, that all children are welcome in FWISD. The statement read as follows:

Parents or Guardian,

Good evening. This is Fort Worth ISD Superintendent Kent P. Scribner.

In the past 24 hours, there has been much talk in the news and on the Internet bout the use of social media by our staff. Our mission is to prepare ALL students for success in college, career and community leadership. Let me reiterate our commitment that every child in the District is welcome and is to be treated with dignity and respect.

As we conclude the school year this Friday, please know we take this promise very seriously and your child's safety and well-being are always our number-one priority. Thank you. **Ex. P18, R5, HT, Vol. 1, 156:3-13, 157:2-5, 201:14—203:15, 222:24-223:18.**

92. Beginning on May 28, 2019, FWISD received numerous phone calls, emails, text messages, and comments posted to the FWISD social media websites, confirming that Ms. Clark's

tweets were in wide circulation. **Ex. P22, P24; HT, Vol. 1, 92:19-93:12, 119:15-120:1, 222:17-23.**

93. At least one individual tweeted an intent to come onto Fort Worth ISD property to visit Ms. Clark at Carter-Riverside High School regarding her tweets. **HT, Vol. 1, 35:2-7.**

94. Dr. Scribner received an angry text message stating, “Hey stupid f.... What are you going to do when a new white flight occurs and there are no more whites around to fund yours...hole spic school system? You have got to be one of the biggest AIDS-ridden faggots I have ever seen. F... you. Nice house by the way.” Dr. Scribner felt threatened by the last sentence of the text message and notified Daniel Garcia, FWISD Safety and Security Director of his concerns. A police report was subsequently filed with the Fort Worth Police Department regarding the threat. **Ex. P28, HT, Vol. 1, 231:8—233:15.**

95. FWISD received a message via social media stating, “If that teacher doesn’t get fired y’all do know that s... is about to go down right? Like what do you think will happen?” **Ex. P22.**

96. Gregory Ruthart, Principal at Carter-Riverside High School, testified he spoke to at least one parent who wanted to keep her children home from school out of fear resulting from Ms. Clark’s tweets and the public reaction to them. **HT, Vol. 2 11:13-15.**

97. Kiana King, Fort Worth ISD’s Social Media Coordinator, testified that the volume of reaction to Ms. Clark’s tweets on various social media platforms made it more difficult and time-consuming for awhile for her to perform her job duty to monitor social media platforms for threats to Fort Worth ISD for a short period of time. **HT, Vol. 2, 27:25-28:17.**

98. The reaction from the public caused some disruption to Fort Worth ISD operations and created concern about safety and security risk for students and staff at Fort Worth ISD. Such disruption and concerns were not solely from Clark’ activities and do not support a violation or

good cause. **HT, Vol. 1, 92:15-18, 93:13-17, 120:2-15, 213:5-214:2, 221:12-16, Vol. 2, 27:25-28:17.**

99. The tweets and Ms. Clark's conduct were also the subject of widespread publicity by numerous media outlets beginning on May 29, 2019, including local, national, and international outlets. **Ex's P23, P24; HT, Vol. 1, 121:12-122:2.**

100. On or about May 29, 2019, the Fort Worth Star-Telegram published an article titled "Fort Worth teacher on leave after sending anti-immigrant tweets to Trump, district says." The article included screenshots of Clark's tweets and one screenshot of an individual responding to Ms. Clark's tweet, referenced above in Paragraph 51, by stating that "IM COMING TO CARTER TO PAY YOU A NICE VISIT TOMORROW MRS. CLARK! JUST WATCH!!!" **Ex. P23.**

101. On June 3, 2019, FWISD released summary investigation reports of the Office of Professional Standards pertaining to investigations of allegations of misconduct involving Ms. Clark, copies of Ms. Clark's tweets, and a photograph of Ms. Clark to the Fort Worth Star-Telegram in response to its request for information filed on May 29, 2019 under the Texas Public Information Act. This information was not provided to Clark until after June 27, 2019. **Ex's R9, R10, HT, Vol.1, 107:3—110:24, 161:12-13, 161:18-20, 162:9-10.**

102. The Texas Public Information Act requires Fort Worth ISD to release readily available information promptly in response to a request for public information, unless an exception to disclosure applies to the information and the Fort Worth ISD cannot get an agreement from the requestor to withhold excepted information. **HT, Vol. 1, 111:9-112:5.**

103. In producing the information on June 3, 2019 to the Fort Worth Star-Telegram, Fort Worth ISD withheld evaluative documents regarding Ms. Clark pursuant to an agreement with the Fort Worth Star-Telegram. **HT, Vol. 1, 109:15-110:18.**

104. OPS investigation reports are alleged to be internal memoranda summarizing the status of an investigation of employee misconduct. **HT, Vol. 1, 109:15-110:18, 111:9-112:5.**
105. Unlike evaluative documents, OPS reports are not routinely provided to employees. **HT, Vol. 1, 182:13-183:10.**
106. The Texas Attorney General has previously ruled that in certain situations, internal investigation reports are not confidential evaluations of a teacher or administrator under section 21.355 of the Texas Education Code. **HT, Vol. 1, 184:14-24.**
107. The Texas Attorney General has previously ruled that in certain situations, OPS investigation reports are not confidential evaluations of a teacher or administrator under section 21.355 of the Texas Education Code. **HT, Vol. 1, 184:14-24.**
108. However, the documents released to Diane Smith were evaluative documents that are confidential pursuant to Texas Education Code § 21.355, because they included allegations about her performance, the district's determinations about how the conduct violated policy, and the district's proposed discipline for the conduct. (Resp. Exhibit 20.) *Abbott v. N.E. Indep. Sch. Dist.*, 212 S.W.3d 364, 368 (Tex.App.—Austin 2006).
109. On June 3, 2019, the Fort Worth Star-Telegram published a news story on its website and posted both the confidential Interoffice Memos for the public to read. Ms. Clark had never seen the Interoffice Memos before they were published by this news organization. (Resp. Exhibit 8.)
110. FWISD played a significant role in authenticating, publicizing, and distributing the existence of the Twitter messages and their connection to Georgia Clark. Because of the District's role in publicizing the matter, FWISD failed to prove that Georgia Clark's Twitter posts have caused the severe diminishment of her ability to effectively perform her job as a teacher or disruption to the District.

111. Fort Worth ISD was required by the Texas Public Information Act to release authorized OPS documents within a reasonable time when they were readily available. **HT, Vol. 1 114:4-8.**
112. On June 11, 2019, Ms. Clark, through her counsel, requested that the FWISD release to her all documents that it had given to the press before and after the June 4, 2019, Board of Education meeting. (Resp. Exhibit 14.)
113. On June 13, 2019, the Board of Education of Fort Worth Independent School District issued written notice to Ms. Clark that it had voted to propose the termination of her continuing contract. (Resp. Exhibit 15).
114. On June 14, 2019, Ms. Clark notified FWISD that she intended to protest the proposed termination. (Resp. Exhibit 16.)
115. On June 26, 2019, Ms. Clark made a timely request for a hearing concerning this matter and the appointment of an independent hearing examiner pursuant to Chapter 21, Subchapter F of the Education Code. (Resp. Exhibit 17.)
116. On June 27, 2019, ten business days after Clark's public information act request, FWISD, through its outside counsel, issued a letter to Clark stating that responsive documents to her request were confidential and the District would be requesting an Attorney General opinion. (Resp. Exhibit 18.) Yet FWISD had released information to the press within 3 days on June 3, 2019.
117. On or about the afternoon of June 4, 2019, the Fort Worth Star-Telegram Editorial Board published an opinion article entitled, "Fort Worth school board should fire teacher over Twitter rant on immigrants." **HT, Vol. 1, 122:11-123:2.**
118. On June 4, 2019, Ms. Clark's attorney, Mr. Brandon Brim, sent FWISD a letter noting that "Ms. Clark has been worried about threatening and harassing communications that she has received by telephone from anonymous parties. This is why she was forced to change her phone

numbers last week.” Ex. **P21**; HT, Vol. 1, 133:5-134:5.

119. On June 4, 2019, Dr. Scribner recommended to the Board of Trustees that the district begin the process of proposing the termination of Ms. Clark’s continuing contract. HT, Vol. 1, 212:4-10.

120. On June 4, 2019, the FWISD Board of Trustees voted unanimously to propose the termination of Ms. Clark’s continuing contract pursuant to Chapter 21 of the Texas Education Code. HT, Vol. 1, 91:25-92:2.

121. During the Public Comment portion of the June 4, 2019, Board meeting, fourteen people, including parents, current and former students, and community members, expressed concern and serious reservations regarding Ms. Clark’s ability to fairly educate students at Fort Worth ISD without bias or discriminatory animus. No one spoke in favor or support of Ms. Clark’s actions, social media posts, or comments. Ex. **P26**, HT, Vol. 1, 151:17-21

122. At least one commenter at the Public Comment portion of the June 4, 2019, Board meeting expressed the concern that Ms. Clark’s tweets could have a chilling effect on immigrant students attending school at Fort Worth ISD. Ex. **P26**.

123. Several commenters at the Public Comment portion of the June 4, 2019, Board meeting expressed their concern that Ms. Clark’s tweets and classroom conduct could affect students’ learning, mental health, and general well-being. Ex. **P26**.

124. Following the June 4, 2019 Board meeting, FWISD and its staff and officials continued to receive numerous phone calls, emails, and other messages regarding Ms. Clark’s conduct and FWISD’s decision to propose termination of her contract. Ex’s **P19, P20, P22, P24, R24, HT, Vol. 1 152:6-14**.

125. FWISD Policy DH (Exhibit) incorporates the Educators’ Code of Ethics adopted by the

State Board of Educator Certification in district policy. The Code of Ethics provides standards of ethical conduct that educators are held to, including conduct with students and conduct with colleagues. **Ex. P6; HT, Vol. 1, 146:3-8.**

126. FWISD Policy FFH (Local) prohibits FWISD employees from discriminating against any student on the basis of specified protected categories, including race, ethnicity, and national origin. Discrimination against a student is defined as conduct directed at a student on the basis of those same protected categories. **Ex. P8; HT, Vol. 1, 150:13-16.**

127. FWISD Employees are expected to be familiar with Fort Worth ISD policies and administrative regulations regarding employee standards of conduct. **HT, Vol. 1, 150:21-151:1.**

128. Fort Worth ISD policies are provided online and in the employee handbook, which is provided to employees each year. **HT, Vol. 1, 150:21-151:1.**

129. On or about May 29, 2019, someone in the Fort Worth community who had noticed Ms. Clark Twitter messages, reported the messages to Fort Worth ISD.

130. On May 29, 2019, two days before the end of the school year, the District placed Ms. Clark on administrative leave.

131. Since Ms. Clark missed only two days of classroom instruction before the District broke for the summer, there is no evidence of how effective as a teacher Ms. Clark was after the publicity of the Twitter messages. Therefore, FWISD's evidence of the loss of effectiveness is speculative and does not support a violation or good cause.

132. On May 29, 2019, Clint Bond, Executive Director of External and Emergency Communications, told at least one news organization that Georgia Clark was a teacher employed by Fort Worth ISD, the Twitter account @Rebecca1939 belonged to her, she posted the messages of concern, and she was placed on paid administrative leave after as much was confirmed by the

district.

133. Beginning on May 29, 2019, multiple news outlets began publishing stories on the Twitter messages citing “officials” within Fort Worth ISD as sources.

134. On May 29, 2019, Superintendent Kent Scribner sent a voice/email message to district parents and guardians. For any district parents that had not been attentive to the news and/or social media in the past 24 hours, this vague announcement alerted those parents to search out more information.

135. On May 29, 2019, news organizations began requesting documents from FWISD about Georgia Clark, including one request from Diane Smith at the Fort Worth Star-Telegram.

136. On May 30, 2019, Superintendent Kent Scribner delivered a letter to Georgia Clark informing her that he would recommend her proposed termination at the June 4, 2019, Board of Education meeting.

137. On June 3, 2019, three business days after the request was made and one day before the scheduled board meeting, FWISD officials delivered multiple documents to Diane Smith at Fort Worth Star-Telegram, including two “Interoffice Memo’s that were marked as “draft” and “confidential”. These two memos were summaries of internal investigations of Georgia Clark from 2013-14 and 2019 that were drafted by an investigator in the Office of Professional Standards in FWISD. The 2013-14 memo contained inaccurate statements about the resolution of the investigation, stating falsely that Ms. Clark was issued a Letter of Reprimand and suspended without pay for three days. The 2019 Interoffice Memo included screenshots of at least fifteen (15) Twitter messages appearing to be from Georgia Clark.

138. Dr. James Veitenheimer is a former Superintendent of Keller and Deer Creek I.S.D and Area Superintendent of Austin I.S.D. These districts are similarly situated to Fort Worth ISD.

This witness was qualified and competent to testify as an expert witness on the standards of conduct expected of professional educators in Texas school districts similarly situated to FWISD.

Ex's P31, 9:10-24, P32.

139. Dr. Veitenheimer's report and testimony state that it was his opinion that Ms. Clark failed to meet the standards of conduct for the profession as generally recognized and applied in similarly situated school districts to Fort Worth ISD. **Ex. P31, 16:18-18:2, 18:9-19:5, P32.**

140. FWISD's expert witness Dr. James Veitenheimer testified that based on the documents given to him to review in his expert opinion there was good cause to terminate Ms. Clark's continuing contract. Dr. Veitenheimer's opinion was not credible or persuasive in his testimony, in part because his opinion was based on his assumption that Ms. Clark had been previously reprimanded for similar conduct. Since the existence of a previous reprimand was proven false and the expert refused to speculate about his opinion on different facts, his opinion is not credible and does not support good cause. (Pet. Exh. 31.)

141. The press was given the information about Clark background, within 3 days, of an alleged request, June 3.

142. However, Clark, in all her years with the District had not been given copies of the information and the District waited 10 days after Clark's request to finally provided it to her after June 27, 2019.

143. A number of the speakers at the board meeting on June 4, 2019 referred to the personnel information and prior instances in Exhibit ____ and commenting about Clark's alleged "reprimand"

144. Clark has not been suspended without pay.

145. Clark's District pay was not deducted in the 2013 – 14 school year.

146. Clark has not been given a letter reprimand.

147. Clark was not given documentation of the results of the 2013 2014 investigation.

148. Clark had good appraisals and continued her employment for 5+ years.

149. James R. Veitenheimer, PHD.

His opinion was that Clark being an effective teacher was compromised after publication of the Tweets, "... With the other factors that it are involved." He places heavy importance on the past behavior alleged in documents provided to him to support his opinions and Clark's termination. See Deposition, Exhibit 31, p. 17, l. 11 and Exh 13.

He stated, at P. 18, L. 9 "The -- the other thing that formed my opinion was that, in the documents, it would indicate that this is not the 1st time. That, in fact, this has happened before. And the District took actions to clarify and present what they believe to be effective behavior as a teacher, as well as with the policy and procedures were and it happened a 2nd time."

150. It had not happened before. There is no evidence of a written Notice, a Directive, a growth plan for any of the prior incidents in Clark's employment with the District.

151. There is no evidence of a written Notice, a directive, a growth plan for any of the prior incidents in Clark's employment with the District having been presented to Veitenheimer to use in forming his opinion.

152. He states he relied upon the information in Exhibit 13 to his deposition, which is at least inaccurate, incomplete and misleading.

153. There is no evidence, as he alleges, that this has happened before and the District took actions to clarify and present what they believe to be effective behavior. No written document has been produced of what he calls "actions to clarify".

154. He has never been involved in a contract termination based on the public perception of the employee in that their diminished effectiveness or a free-speech retaliation.

155. Veitenheimer's Report Exhibit 4 to his deposition Exhibit 31.

"Additionally, if the allegations are true, it is my opinion,... Clark's conduct renders her ineffective...."

156. All of the allegations about Clark are not true or are suspect and contradicted.

157. Clark did not make a public announcement.

158. Clark's desire was to have someone do something about the drug problems involving illegal immigrants.

159. Clark's comments do not indicate "discriminatory animus toward students of Hispanic descent..."

160. Clark's Tweets were based on information she had received from other persons whom she believed were knowledgeable about the conditions as well as activities which she herself had observed in the schools.

161. There is no evidence that Clark exhibited discriminatory animus toward her students or violated the Educators Code of Ethics. Clark did not. There is more than abundant evidence of Clark going above and beyond the call of duty and at personal sacrifice to work with and educate all students and especially students with problems, so that they could complete their work and pass.

162. Clark did not violate the Educators Code of Ethics.

163. Simply because there is widespread publicity, of which the District played a part in instigating, does not mean that Clark cannot be and is not an effective educator. Clark is not the one who publicized her private communication on a matter of public concern.

164. Veitenheimer asserts that, P. 3 paragraph 4, "a teacher who has been put on notice that her conduct violates school District policies and expectations and repeats the same or similar conduct

is insubordinate.

165. There is no evidence of such a written notice or directive.

166. Clark was not insubordinate.

167. Veitenheimer, P. 3 paragraph 5, intimates or claims that Clark has posted "... False and defamatory comments regarding her supervisor on a publicly accessible website..."

168. There is no evidence or finding of Clark's comments being false or defamatory.

169. Veitenheimer's opinions are not credible, being based upon evidence which does not exist, erroneous or false information provided to him about prior incidents and erroneous, unfounded assumptions and do not support the District's claim of good cause.

170. The same problems involve Dr. McFarland. Dr. McFarland's opinions are not credible, being based upon evidence which does not exist, erroneous or false information provided to him about prior incidents and erroneous, unfounded assumptions and do not support the District's claim of good cause.

171. Dr. Michael McFarland has been an educator in school districts in Texas since 1993 and is a former Superintendent of Lancaster ISD and a current Superintendent of Crowley ISD. **HT, Vol. 1 77:12-78:8.**

172. As a result of his extensive experience in the profession, Dr. McFarland is familiar with the generally recognized and applied standards of conduct for the teaching profession in school districts. However, his experience is not with districts similar to FWISD. **HT, Vol. 1, 78:9-16.**

173. Dr. McFarland testified that he reviewed the notice of proposed termination, the investigation reports from the 2013-14 school year and May 2019, the student witness statements, and the tweets. **HT, Vol. 1, 84:16-25.**

174. FWISD's expert witness Dr. Michael McFarland similarly testified that based on the

documents given to him to review there was good cause to terminate Ms. Clark's continuing contract. Dr. McFarland's opinion was not credible nor persuasive, in part because his opinion was also based on inaccurate incompetent and his assumption that Ms. Clark had been previously reprimanded for similar conduct. *Transcript* Vol. 2, p.85, line 11 – p.18. Further, Dr. McFarland had never in his experience had to prove good cause for termination, because all past employees considered for termination voluntarily left. *Transcript* Vol. 2, p.81, line 10 – p.82, line 22. Finally, Dr. McFarland testified that in a past case, he had refused to release information about allegations against an employee before a termination was proposed by the Board, indicating that he had not made similar decisions to the Petitioner in this case. *Transcript* Vol. 2, p.83, line 6-14.

175. Ms. Clark's tweets and statements made to students were not racially insensitive and/or discriminatory and did not indicate a discriminatory animus towards students of Hispanic descent and/or students whose national origin is Mexico. **Ex. P17, R4; HT, Vol. 1 75:6-10, 98:11-17.**

176. Ms. Clark's tweets and alleged statements made to students in class did not demonstrate her unwillingness to educate and be inclusive of all students regardless of their immigration status. **HT, Vol. 1, 179:11-15.**

177. Fort Worth ISD reasonably anticipated some continuing disruption of its operations as a result of Ms. Clark's conduct. That would not be sufficient for or constitute a violation or good cause and would not outweigh Clark's free speech rights. **HT, Vol. 1 214:19-215:19, 221:17-20, 228:7-229:2, 230:8-16, Vol. 2 19:18-20**

178. On June 3, 2019, Ms. Clark, through her counsel, sent a letter to the district expressing her concern about the release of evaluative documents and her contact information to the press. (Resp. Exhibit 13.)

179. On June 4, 2019, the Fort Worth ISD Board of Education voted to propose the termination

of Georgia Clark's continuing contract.

180. FWISD failed to show any examples of on-going public uproar about the Georgia Clark matter after the week of the June 4, 2019, Board meeting. Kiana King testified for the district that as of the day of her testimony she had seen zero posts regarding Ms. Clark other than a Fort Worth Star-Telegram story post the day before. *Transcript* Vol. 2, p. 32, line 14 – p.33, line 4.

181. FWISD failed to prove that there is on-going significant disruption to district operations.

182. Ms. Clark's conduct did not create an unwelcoming and hostile environment for Fort Worth ISD students, including undocumented students and students of Hispanic race/ethnicity, in violation of FWISD Policy and the February 28, 2017 resolution of the Board of Trustees.

183. It was not reasonable for FWISD to believe that Ms. Clark's tweets regarding reporting undocumented students to federal authorities, and the widespread circulation of those tweets, would discourage undocumented students from enrolling in or attending FWISD schools.

184. Fort Worth ISD is required by federal law and *Plyler v. Doe* to educate all students who reside within its boundaries regardless of immigration status. **Ex's P10, P11; Vol. 1 179:5-8, 207:13-210-20.**

185. Fort Worth ISD has a school population of close to 89% children of color and a large immigrant student body. **HT, Vol. 1, 94:7-9.**

186. Fort Worth ISD is prohibited from asking students about their documentation or citizenship status. **Ex. P11; HT, Vol. 1 209:9-210:5**

187. Ms. Clark's had no way of knowing and did not know which or how many students at Carter-Riverside High School were undocumented. **HT, Vol. 1 209:9-210:5; Vol. 2 84:15-23, 89:13-18, 90:15-91:21**

188. Ms. Clark's conduct did not undermine parent and student trust and confidence in her

ability to fairly educate all students in her classroom, diminishing her effectiveness as a teacher at FWISD.

189. Ms. Clark's conduct did not interfere with her ability to perform her job effectively and render her ineffective as an educator at Fort Worth ISD.

190. Dr. Scribner testified that the principals of OD Wyatt High School, Diamond Hill High School, and South Hills High School asked him not to reassign Ms. Clark to their campuses prior to the Board's decision on June 4, 2019 to propose the termination of Ms. Clark's continuing contract because Ms. Clark's presence would cause a disruption and Ms. Clark could no longer be an effective teacher. This is unfounded speculation. **HT, Vol. 1 216:2-15**

191. Gregory Ruthart, Principal at Carter-Riverside High School, testified that if Ms. Clark were returned to his campus, he would be concerned that Ms. Clark's presence on campus would cause a distraction as a result of the reaction of students, parents, and the community to her conduct. **HT, Vol. 1, 12:23-13:5**

192. Dr. Scribner was a qualified and competent expert witness regarding the standards of professional conduct generally accepted and applied in Texas school districts similarly situated to FWISD. He testified that in his expert opinion Ms. Clark's tweets and classroom conduct constitutes good cause to terminate her continuing contract because Ms. Clark failed to meet the standards of professional conduct as generally accepted and applied in similarly situated school districts to FWISD. However, his opinions are not credible based on inaccurate and unverified information and do not support good cause. **HT, Vol. 1, 216:16-217:5.**

193. Superintendent Scriber, based on review of Clark's erroneous prior record, considered her problematic behavior was "escalating". The prior allegations were not the same and do not reflect "escalation" even if they have been proven, which they have not been.

194. Nothing was done to verify the alleged prior personnel actions.
195. No survey was done of students.
196. No survey was done of parents
197. There was no survey or evidence on the effect of the Tweets on the community as a whole.
198. There was no survey or evidence on the effect of the alleged incidents of Clark on the community as a whole.
199. There was no survey or evidence on the effect of the Tweets on the administration of the school system.
200. There was no evidence or survey on the effect of the alleged incidents of Clark on the administration of the school system.
201. The evidence shows that before and after the alleged incidents of Clark, prior to May 2019, that she worked with staff and the administration and was an effective teacher of all of her students, going the extra mile for those with special problems.
202. The most recent alleged prior incident is more than 5 years ago. On any of the alleged prior incidents there is no evidence in this case presented of a reprimand, a suspension a written directive or a development plan for the alleged incidents.
203. The collection of mail, emails and newspaper articles does not constitute the kind of survey of an issue and persons interested in those issues that would provide the appropriate basis for a position based on the survey.
204. There were 79 tweets and emails offered by the District in Exh. P 22. 48 were favorable to 31 against Clark.
205. Emails collected by the District showed 41 out of 49 favorable of Clark.
206. Clark was not given the opportunity to show whether she continued to be an effective

teacher or have a working relationship with other District employees resulting from the Tweets, since she was placed on leave, within a few days of the end of the school year and propose for termination without a warning, investigation of the facts surrounding the Tweets and being provided with a growth plan and remediation prior to being proposed for termination.

207. Clark was not warned or reprimanded for her conduct involving the Tweets and to respond to any specific allegations by the District of the Districts allegations that the Tweets were improper.

208. These actions and lack of documentation constituted a denial of due process.

209. Clark was not warned or reprimanded by her principal or staff above her for alleged incidents prior to her May 30, 2019 suspension that she had violated established school board policy or that a repetition of any specific conduct related to the Tweets could lead to the termination of the contract.

210. Clark's principal or any District administration above the principal did not warn or reprimand Clark prior to her suspension on May 30, 2019 that she had violated established school board policy or that a repetition of any specific conduct could lead to the termination of a contract concerning the quote Tweets.

211. Clark's principal and the District administration above him never raised with Clark any objection to anything she had ever done prior to her suspension on May 30, 2019. In fact, Clark had been given positive appraisals and continued her employment for years.

212. There is no evidence of any training given to Clark (or anyone else in the District) on social media including its technical processes and when and how it may be made public or considered "publicly communicated".

213. Clark did not repeat the alleged conduct about which investigations were made in 2007, 2013 and 2014.

214. Clark was not warned or reprimanded by her principal or other District administrators prior to her suspension on May 30, 2019 that she had violated established school board policy concerning the incident of on or about May 17, 2019 of the student requesting to go to the restroom or that a repetition of any such alleged specific conduct could lead to the termination of her contract

215. If the allegations of the May 17, 2019 class incident about the bathroom were in fact improper or a violation they were not egregious, and it required Clark be provided a prior warning and an opportunity for remediation.

216. If the allegations about the Tweets were in fact improper or a violation, they were not egregious and required Clark be provided a prior warning and an opportunity for remediation.

217. Because Clark's conduct was remediable, the District did not have good cause to terminate her without prior warning and a legitimate opportunity for remediation. Because no such opportunity was provided Clark's appeal should be granted including without limitations on this basis.

218. Clark's actions on May 17 and in the Tweets were not intended to and did not pose a threat to emotional or physical harm to students or to other District employees.

219. Student number 1, while her report of the incident is not credible, stated that she was not concerned about Clark as a teacher until after the news and emails following May 30, the next to last day of school.

220. In prior incidents, Clark was told about the allegations. However, Clark received no warning. Over 5 years have elapsed since that last incident. Clark received appraisal ratings of standard to exceeding expectations yearly. There is no evidence of substandard teaching or repeat of any of the alleged prior instances.

221. Clark received no notice of a violation concerning the May 17 incident, warning or growth

plan, or an opportunity to remediate which could have been concluded and achieved.

222. Clark was not given adequate notice or an opportunity to remediate before Clark's continuing contract was proposed for termination by the District.

223. The decision of the District to propose termination of Clark's employment was not based on good cause.

224. Clark, with her Tweets, did not intend to do anything wrong, did not believe she was doing anything wrong and did not understand she was doing anything wrong in terms of the conduct required of her as a teacher with District.

225. Clark regrets that the Tweets had gone "public" and that she had made some mistakes, which was not her intent. However, Clark also reiterated her concern and love for her students in trying to help all of them to achieve their potential and to complete their required assignments and pass and she wished to continue to do that. Additionally, her positive conduct with and on behalf of her students is expressed in her evaluations.

226. There is not sufficient evidence that Clark's conduct of the May 17 alleged incident substantially and continually disrupted or could disrupt the efficient functioning of the District.

227. There is not sufficient evidence that Clark's conduct concerning the Tweets substantially and continually disrupted or could disrupt the efficient functioning of the District. The District did receive increased emails and calls and there were additional newspaper publications for a short period, but that is not evidence of a disruption of the District's ability to function efficiently to support good cause.

228. According to the District, the increased activity related to Clark peaked on May 29 and has been nonexistent since a few days after the June 4, 2019 Board Meeting.

229. Clark did not intend for her Tweets to disrupt the functioning of the District, interfere with

the District work or affect her relationship with her superiors and coworkers.

230. Clark's Tweets were a motivating or substantial factor in the Districts decision to recommend termination of Clark's contract.

231. The District's proposal to terminate Clark violates Clark's free speech.

232. Clark's Tweets do not advocate disregarding the requirements of Pylar to teach all students who are residents in the District.

233. Clark's Tweets do not advocate or indicate in any way that she was not and would not comply with Pylar and teach all students who were residents in the District.

234. Whether a student is residing in the District legally or illegally is a separate issue over which Clark had no control. She was entitled to her opinion on a matter of public concern connected to drugs, and drug problems at the school of which she had received information as well as had personal observations and knowledge.

235. There is no evidence that Clark knew which students residing in the District were illegal or that she took any action to determine which students residing in the District were illegal.

236. Teacher reprimands are confidential under Texas Education Code Section 21.355, see Abbott.

237. Nothing in the District's policies or directives describe the specific behavior which Clark is alleged to have violated. There either were no directives given or the directives given were not prescriptive, nor was Clark given a plan of corrective action.

238. The District's complaints about the Tweets are vague, generalized and are not of specific reference for Clark to know what conduct was allegedly wrong.

239. An exception may be that the District alleges that Clark did not clearly define she was not a teacher of the District. That claim is disputed in that the policy may not be as clearly worded as

the District would like, but Clark never claimed in the Tweets to be a teacher in the District and the Tweets were not intended to be public. Clark was not intending to publicly communicate and was not aware she was publicly communicating and did not violate District policy.

240. Bank statements for Ms. Clark from 2013 and 2014 show that she was never docked three days of pay. (Resp. Exhibit 19.) Petitioner admits that no pay was ever docked. (Resp. Exhibit 12.)

241. There is no Letter of Reprimand from the 2013-14 school year.

242. Board President Jacinto Ramos, Jr. testified that an employee who publicly states an intent or desire to deport undocumented students is likely to negatively impact the education of students who become aware of the statements because the students will have difficulty focusing and parents may be hesitant to send their children to school. **HT, Vol 1, 91:1-13.**

243. FWISD did not reasonably believe that Ms. Clark's tweets regarding reporting undocumented students to federal authorities would create an educational environment that is not free from insecurity and fear for undocumented students.

244. There is no evidence that Ms. Clark made false statements regarding Fort Worth ISD and her colleagues, including that "[d]rug dealers are on our campus and nothing was done to them when the drug dogs found the evidence." **Ex. R25; HT, Vol. 2 94:4-18.**

245. FWISD did not reasonably believe that Ms. Clark's tweets regarding her supervisor, and other employees, would negatively impact the close working relationship between a teacher and her supervisor or employees.

246. Ms. Clark's conduct did not violate standards 1.7, 2.5, 3.2, and 3.4 of Educator's Code of Ethics adopted by the State Board of Education and FWISD Board Policy DH (EXHIBIT).

247. Clark has been and can continue to be an effective teacher of children of all races and

nationalities, such as the girl who transferred in from San Salvador who had difficulty speaking English. As in the past, Clark has helped them to be successful on their tests work. R 21, 26; T2, page 73 tab 81.

248. There were students needing help who were going to be assigned to other teachers. The students and Principal Ruthart, requested Clark. One situation involved a short deadline to get the 53 students prepared, complete their writing and take tests, with Clark working until 7:30 pm for a week and including on Saturdays.

249. In the summer of 2018, Clark was to have surgery due to an automobile accident. However, Mr. Ruthart requested that she work with 11 senior students who had failed their history and English tests. The students were supposed to go to North Side High School to work with someone to prepare to retake the test. The students were refusing to go to North Side and requesting that Clark come in and help them. District supported the student's request for Clark to assist them in preparing for and passing the test they needed. Clark canceled the needed surgery to help the students and they were successful in passing.

250. There is no evidence that Clark was not an effective teacher.

251. There is no evidence that Clark cannot continue to be an effective teacher.

252. There is no evidence that Clark let whatever her personal beliefs were interfere with her efforts to educate all the students, year after year.

253. Students #1 and #2 thought Clark was a good teacher until later when their opinion was affected by all of the publicity of May 29 about Tweets and thereafter.

254. The Superintendent and staff recommendations were based upon erroneous or incomplete information.

255. The District did not obtain any explanation from Clark about the Tweets other than she

wrote them, such as purpose or to whom published.

256. Clark cared about her students tried to make a safe environment for them and they listen to her and requested her help. The District generally assigned to her “re-tester’s” and students with other problems because of her ability to get them to perform and to pass. Many of the students failed many times and had given up on themselves but she was able to work with them and get them to pass the tests.

257. Clark never asked a student about their immigration status.

258. Clark never attempted to report a student to any law enforcement agency about their immigration status.

259. Clark has regrets about the Tweets, she could have phrased them better and they have been misinterpreted.

260. Ms. Clark was entitled to remediation.

261. Remediation:

1. The prior incidents alleged by the District have not been proven here”, have not been proven to be “similar allegations” and have not been documented, there being

- a. No reprimand
- b. No warning
- c. No directives
- d. No plan

262. The statutory standard for terminating a continuing contract and suspending a continuing contract without pay is good cause.

263. “Good cause” is defined as the “the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school Districts in this

state.” Tex. Educ. Code section 21.156.

264. Previous year’s actions by a teacher usually cannot be used to terminate continuing contracts.

265. Termination for repeated failure to comply with official directives ... requires a teacher be provided a prior warning and an opportunity for remediation where the conduct is remediable.

266. Clark’s alleged misconduct, if any, was remediable.

267. A teacher must be specifically advised of the objectionable conduct which the teacher can be reasonably expected to correct and be given a legitimate opportunity to conform her conduct showing that a teacher has been advised of the deficiencies and either cannot or will not overcome them.

268. None of the actions posed any threat of emotional or physical harm to or threat of harm to other District employees or children.

269. Violations were not brought to Clark’s attention until after her suspension and other violations could have been remediated

270. Because petitioner’s conduct was remediable, the District did not have good cause to terminate her without prior warning and a legitimate opportunity for remediation. Because no such opportunity was provided, petitioner’s appeal should be granted.

271. Clark was not given adequate notice or opportunity to remediate before her continuing contract was proposed for termination by the District.

272. The decision of the District to proposed termination of Clark’s employment was not based on good cause pursuant to Texas Education code.

273. Clark’s appeal should be Granted.

274. The District did not consider whatever directive Clark may have been given, if any, in 2014, important enough to clarify it in writing or serious enough to document in any way so it

could be used as cumulative data that could affect Ms. Clark's evaluation, pursuant to 19 Tex. Admin. Code Sect. 150.1003.

"(f) The certified appraiser is responsible for documentation of the cumulative data identified in subsection(b)(6) of this section. . . . Any documentation that will influence the teacher's summative annual appraisal report must be shared in writing with the teacher within ten working days of the certified appraiser's knowledge of the occurrence."

275. The District cannot adopt a policy or give a directive that limits the use of free speech as the District seeks to do here.

276. The District failed to carry its burden as required by the Tex. Education Code of proving by a preponderance of the evidence that Ms. Clark's actions in this case were unlawful or occurred as alleged.

277. Clark's alleged conduct is not otherwise contrary to and inconsistent with the ordinary standards set by the performance and conduct of other professional public employees of the District.

278. Clark's conduct would not cause the public, students, or employees to lose confidence in the administration and integrity of the District. There is no credible evidence of support of loss of confidence.

279. There is no credible evidence of similar school teachers regarding conduct and standards.

280. Clark did perform her duties as a teacher and to the District in accordance with state and federal law, District policy, and ethical standards for professional educators.

281. Clark did recognize and respect the rights of students, parents and members of the community to serve the best interests of the District.

282. Clark's conduct did not constitute good cause for the District to recommend termination of

her employment contract.

283. The District did not carry its burden and establish its claims by credible evidence that Ms. Clark had violated Board policy, Texas law or otherwise determined to be not in the best interest of the District as alleged in the District's Letter.

284. Clark has not failed to meet accepted standards of conduct for the teaching profession as adopted by Fort Worth Independent School District and is generally recognized and applied in similar situated school districts in Texas which would warrant Clark's termination.

285. The District has failed to carry its burden to establish that Clark has failed to meet said accepted standards of conduct.

286. Clark was not insubordinate.

287. A school district is prohibited from infringing upon Clark's free speech, including disciplinary proceedings for the proposed termination of the employee's contract.

288. The district has failed to carry its burden by credible and competent evidence that the districts policies were violated.

289. There is no evidence of remediation either in 2013-14 or May 2019.

290. SI's testimony is not probative of Clark's actions and what happened on May 17 or 21, 2019 and does not support termination or good cause.

291. The testimony of McFarland, Ramos, Scribner and Veitenheimer does not have probative value including as to the boundaries and standards of a professional educator.

292. The District's evidence, if any, of standards of other school districts was insufficient to support the District's allegations.

293. There is insufficient credible evidence of an actual public perception of Clark's conduct

which could cause a loss of confidence as alleged, particularly when all of the facts are known.

III. DISCUSSION

This is an unfortunate chain of circumstances for all parties. Our system of protecting the rights and interests of the parties, here, the District, the teacher and the students, is based upon law and evidence, not the emotions of the moment. They are not protected by who speaks the loudest, or how many speak or what may be the most popular to one group or another. For instance, the fact that 14 people may show up at a board meeting and express their opinions, which may or may not have a basis, and which may or may not be based on erroneous information does not dictate the decision. Some might view it that the thousands who did not show up at the board meeting should have the prevailing position over the 14. In this situation, we take the opportunity to attempt to gather the facts and to apply the law and prior decisions to those facts.

In this type of case, the District has the burden of to prove by the preponderance of the evidence the facts to support its position and to meet the standard to show that "good cause" exists to terminate the teacher. If there is conflicting testimony about a fact, then there is an issue as to whether what fact is established. One witness says the traffic light was green. The other witness says the traffic light was red. Which was it? Are there are reasons or other evidence to believe one witness over the other to decide what the color of the light was? Just because a statement is written down someplace does not mean that it's a fact. For instance, if someone wrote on a piece of paper that you own the property on which the Stockyards sits does not mean that's true. Where is the deed which actually shows your ownership of the property?

The evidence in this case has some conflicting testimony as well as documents and missing documents. Having heard the testimony and considered the demeanor of the witnesses and the basis of their testimony and having reviewed the documents submitted, it has been determined as outlined in the findings of fact and the conclusions of law that good cause has not been established to terminate Ms. Clark. That is in no way an indication of agreeing or disagreeing with her beliefs or what she is alleged to have done. That is not the test. The test is whether or not a preponderance of the evidence established good cause to terminate Ms. Clark. It did not.

IV. CONCLUSIONS OF LAW:

1. After due consideration of the record, of the evidence at the hearing, arguments of counsel, matters officially noticed, and the foregoing findings of fact, in my capacity as Hearing Examiner, by a preponderance of the evidence and my findings of fact, I make the following conclusions of law:
2. Any finding of fact that is deemed a conclusion of law, shall be considered a conclusion of

law. Any conclusion of law that is deemed to be a finding fact, shall be considered a finding of fact.

3. Article I, and II are incorporated herein by reference.

4. The Hearing Examiner has jurisdiction over this proceeding under Subchapter F, Chapter 21, Texas Education Code (TEC).

5. Ms. Clark's continuing contract is governed by Chapter 21, Subchapter F, TEC. TEC Section 21.156 provides that good cause is the "failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in the state."

6. Clark's recommended termination is not for good cause.

7. FWISD is required by federal law and the U.S. Supreme Court's ruling in *Plyler v. Doe*, 457 U.S. 202, to educate students residing within the District regardless of their immigration status or the status of their parents.

8. Ms. Clark's tweets of May 17 and 22, 2019, did not advocate violation of federal law requiring FWISD to educate students regardless of their immigration status and to refrain from discouraging children from enrolling in or attending school as a result of their immigration status.

9. Fort Worth ISD did violate Ms. Clark's rights under the First Amendment to the United States Constitution to freedom of speech when it proposed her termination on June 4, 2019.

10. Ms. Clark did not make insensitive and/or discriminatory statements to students, based on student race, ethnicity, and/or national origin, on or about May 17 or 21, 2019.

11. The expert testimony of Dr. Michael McFarland, Superintendent Kent Scribner, Kiana King, Jacinto Ramos and/or Dr. James Veitenheimer, that conduct by Ms. Clark failed to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly

situated school districts in this state is not credible, probative and does do not support violations and good cause to terminate Clark.

12. Ms. Clark did not post publicly tweets on social media that included insensitive, discriminatory, and/ or offensive statements, based on the race, ethnicity, national origin and immigration status of students, and Ms. Clark's conduct did not fail to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state.

13. Ms. Clark did not make racially insensitive and/or discriminatory statements to students on or about May 17 and 21, 2019, and that this alleged conduct does not constitute good cause for termination of Ms. Clark's employment contract.

14. Ms. Clark did not post publicly tweets that included racially insensitive and/or discriminatory statements, and this alleged conduct does not constitute good cause for termination of Ms. Clark's employment contract for allegedly causing some disruption of the operations of FWISD, and in particular, the operation of Carter-Riverside High School.

15. The widespread publicity and public knowledge, regarding Ms. Clark's posts on Twitters, do not and would not render her ineffective as an educator at Fort Worth ISD .

16. Ms. Clark did not violate the standards of conduct set forth in the Educator Code of Ethics, FWISD Board Policy DH (Exhibit), which standards have been adopted by the State Board for Educator Certification, and this alleged conduct was not inconsistent with the continued existence of the employer-employee relationship between Ms. Clark and Fort Worth ISD.

17. Ms. Clark did not violate Educator's Code of Ethics standard 1.7, FWISD Board Policy DH (Exhibit) which requires an educator to comply with state regulations, written local school board policies, and other state and federal laws.

18. Ms. Clark did not violate Educator's Code of Ethics standard 2.2, FWISD Board Policy DH (Exhibit) which prohibits an educator from harming others by knowingly making false statements about a colleague or the school system.
19. Ms. Clark did not violate Educator's Code of Ethics standard 2.5, FWISD Board Policy DH (Exhibit) which prohibits an educator from discriminating against or coercing a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.
20. Ms. Clark did not violate Educator's Code of Ethics Standard 3.2, FWISD Board Policy DH (Exhibit), which prohibits an educator from intentionally, knowingly, or recklessly treating a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.
21. Ms. Clark did not violate Educator's Code of Ethics Standard 3.4, FWISD Board Policy DH (Exhibit), which provides that the educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender, disability, national origin, religion, family status, or sexual orientation or intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.
22. Ms. Clark did not violate Fort Worth ISD School Board Policy FFH (Local) Student Welfare; Freedom from Discrimination, Harassment, and Retaliation, which prohibits discrimination against any student on the basis of specified protected categories, including race, ethnicity, and national origin.
23. Ms. Clark was entitled to remediation of her conduct, consisting of public comments on social media, as this conduct was not egregious, and did not indicate her refusal to comply with the stated policies of the FWISD Board of Trustees, and the clearly established constitutional law

as announced by the U.S. Supreme Court, regarding the education of resident students regardless of their immigration status.

24. Ms. Clark's conduct, and tweets did not express her personal rejection of existing federal law regarding education of students regardless of immigration status, and did not show she made insensitive, discriminatory, and/or demeaning comments based on the race, ethnicity, national origin, or immigration status of students, which if any, were not egregious, and remediation was required.

25. The Texas Public Information Act requires governmental bodies who receive requests for information from the public to produce information promptly, within a reasonable amount of time following the request for information.

26. If a governmental body has information requested under the Texas Public Information Act readily available and on hand, the Texas Public Information Act requires the governmental body to produce it promptly and not wait until the tenth business day following the governmental body's receipt of the request.

27. No conclusion is made as to whether the District was authorized to release Clark's information. The fact is it did.

28. I hereby adopt all of the Conclusions of Law as Findings of Fact.

29. A continuing contract may be terminated if the District proves by a preponderance of the evidence that one or more actions constitute good cause for termination. FWISD has not proven good cause exists to terminate Clark.

30. The District recommended the termination of Clark's employment under Section 21.211 of the Texas Education Code and Clark's Contract and pursuant to the authority in Fort Worth ISD Board Policies.

31. Clark was provided a fair and impartial hearing pursuant to Chapter 21, Subchapter F, of

the Texas Education Code.

32. The hearing of Clark's appeal was conducted pursuant to Section 21.256 of the Texas Education Code, and the standard of review in determining the findings of fact were based on the "preponderance of the evidence."

33. Clark is subject, by her contract, to the Board policies and procedures in existence at the time she signed her contract, and which may have been adopted during the term of her contract.

34. By a preponderance of the evidence, Clark's actions during her employment with FWISD during the 2018-2019 scholastic year are not inconsistent with and do not violate Clark's Contract, FWISD Board policies, state and federal law and codes of ethics, as described herein, which are incorporated herein also as Conclusions of Law and do not constitute good cause for the recommended termination of her FWISD contract. More specifically:

a. Clark did not engage in actions or conduct that was contrary to or inconsistent with the ordinary standards set by the performance and conduct of other professional public employees of the District.

b. Clark did not engage in conduct or behavior either that did or could cause the public, students, or employees to lose confidence in the administration and integrity of the District.

c. Clark did not fail to meet acceptable standards of conduct for employees in like or similar positions, which would make retention of her employment detrimental to the best interests of the District.

d. Clark did not engage in actions or conduct that constitutes "good cause" for her termination under Texas law or otherwise renders it in the best interest of the District to terminate her employment.

35. The alleged reasons for FWISD's recommendation for termination of Ms. Clark are alleged

to be serious, but are not egregious and remediation was possible and required.

36. There is not good cause for terminating Clark's employment during the term of her contract, Fort Worth Independent School District is required to honor her employment contract.

37. Further, pursuant to the U. S. Constitution, the District is prohibited from terminating Ms. Clark's contract based on her free speech and the circumstances of this case.

38. Clark's Tweets were a private citizen's free speech about a matter of public concern and was privileged and does not establish good cause for her termination.

39. The Independent Hearing Examiner as the finder of fact determines the credibility of witnesses and resolves conflicts in testimony. *Montgomery Indep. Sch. Dist. v. Davis*, 34 S.W.3d 559, 567 (Tex. 2000).

40. Clark's testimony is credible, and Clark had a basic and rational belief that her actions were rational, reasonable and privileged.

41. Clark reasonably believed her actions were privileged and reasonable and do not support good cause.

42. S1 is not a credible witness and her testimony is not credible.

43. Clark's alleged conduct, Tweets and conduct in class on May 17 and 21, 2019, would not cause the public, students, or employees to lose confidence in the administration and integrity of the District.

44. Fort Worth Independent School District failed to establish and does not have good cause to terminate the continuing contract with Georgia Clark.

45. A school district cannot bring a disciplinary proceeding against a professional employee for insubordination when the alleged insubordination is that an employee failed to follow an administrator's directive, and there is no evidence of that directive.

46. Clark's conduct with the Tweets was privileged and protected.

47. No credible probative evidence has been presented from similarly situated school districts.

48. Clark's conduct was privileged and reasonable.

49. "Termination" is controlled by Tex. Ed Code. The Board of Trustees may terminate a contract at any time for "good cause."

50. FWISD, through its documentation as well as testimony as identified in the Findings of Facts above, has failed to identify such violations, deficiencies misdeeds, and failure to follow directives as to constitute failure by Clark to comply with her contract, Board policies, state and federal law, and ethics, and to constitute good cause for proposed termination of her contract and that her conduct was not justified and privileged.

51. Because there is not good cause for terminating Respondent's continuing contract, Fort Worth Independent School District is required to honor her employment contract.

52. Because there is not good cause for terminating Respondent's continuing contract, Fort Worth Independent School District is required to address its concerns in other ways. If it believes she acted inappropriately, the district may reprimand or take other appropriate corrective action, including placement on an improvement plan, and take more severe action if Respondent cannot or will not correct the complained of behavior.

V. RECOMMENDED RELIEF

After due consideration of the record, matters officially noticed and the foregoing Findings of Fact and Conclusions of Law, the Certified Independent Hearing Examiner RECOMMENDS:

A. That the Board of Trustees of FWISD's adopt the foregoing Findings of Fact and Conclusions of Law and enter an Order consistent therewith; and

B. FURTHER that the FWISD administration's proposed termination of the continuing contract of Georgia Clark is not justified, is not supported by the evidence, should not

be approved, should be denied and should not be upheld and that Georgia Clark's appeal of the proposed termination be Granted and that FWISD enter an Order declining to terminate the employment of Clark and re-instating Clark.

SIGNED AND ISSUED this 29th day of August 2019.



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INDEPENDENT HEARING EXAMINER

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